United States Court of Appeals

for the Second Circuit

SUPPLEMENTAL APPENDIX

75-1393 B

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1393

UNITED STATES OF AMERICA,

Appellee,

—v.—

JOE TRUMAN BOYD, ET AL.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT ROBERT E. FORD'S SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
MAR 2 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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* A co-appellant, Ernest Mullenax, has filed an appendix which includes, *inter alia*, the docket entries, the indictment, the prosecutor's opening and summation, and the proceedings commencing with the Court's charge to the jury and concluding with the jury's verdict against seven of the defendants. The appellant Mullenax declined to join with the appellant Ford in a single appendix. For that reason, this supplemental appendix will continue the pagination of the Mullenax appendix.

Following the filing of the Government's brief, the appellant Ford will file an indexed tab volume of documentary exhibits relevant to his appeal.

A 1117

GOVERNMENT DISCLOSURE STATEMENT (March 10, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOE TRUMAN BOYD, et al., : 75 Cr. 140 (MP)

Defendants. :

- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

W. CULLEN MAC DONALD, being duly sworn deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and, as such, am familiar with and am in charge of the above-captioned matter.

2. I make this affidavit, after reviewing the Government files in the above-captioned matter, for the purpose of curtailing undue delay in the administration of criminal justice and conserving the Court's time by setting forth that information otherwise available to the above defendants, upon motion properly made pursuant to Rules 7(f) and 16 of the Federal Rules of Criminal Procedure and Section 2518, paragraphs (8), (9) and (10), of Title 18, United States Code, which the Government will make available to each defendant entitled to such information, irrespective of whether such motion was made.

39

GPO 1972 O - 476-479

WALTER G. BRANNON
Notary Public, State of New York
No. 24-0394500
Qualified in Kings County
Cert. filed in New York County
Term Expires March 30, 1975

WCMacD:dm

Prior Proceedings

3. On February 10, 1975, Indictment 75 Cr. 140 in fifty-two counts, was filed charging all the above named defendants with conspiring to violate Sections 1001, 1341 and 1343 of Title 18, and Section 77e, 77q and 77x of Title 15, United States Code, and with substantive violations of such provisions.

4. On February 24, 1975, all of the defendants appeared and pleaded not guilty to Indictment 75 Cr. 140 except the defendant Ernest R. Mullenax for whom a plea of not guilty was entered and a bench warrant issued upon order of Morris E. Lasker, United States District Judge. The defendants were instructed that motions were returnable in 10 days and Indictment 75 Cr. 140 was assigned to Milton Pollack, United States District Judge, for all purposes.

5. The Government will furnish a Bill of Particulars setting forth the following:

a) the "false writings and documents" and the "financial statements" charged in paragraphs 3(h) and 3(j) of Count One;

b) the approximate time, date and location of each overt act set forth in Count One;

c) the letters and the records of telephone calls charged in Counts Two through Twenty-Eight;

d) the documents charged in Counts Fifty-Two and Fifty-Three; and

e) the names, if any, of co-conspirators known to the Government and not identified in the indictment.

6. The Government will make available to each defendant for inspection and copying at the United States Attorney's offices during reasonable business hours:

WALTER G. BRANNON
Notary Public, State of New York
No. 24-0394503
Qualified in Kings County
Cert. filed in New York County
Term Expires

a) his written or recorded statements or confessions, if any, within the meaning of Rule 16(a) of the Federal Rules of Criminal Procedure;

b) results or reports of medical examinations and scientific tests, if any, within the meaning of Rule 16(a);

c) his recorded testimony before the grand jury, if any, within the meaning of Rule 16(a);

d) books, papers, documents, tangible objects or places under the control of the Government, if any, which may be material to the preparation of his defense within the meaning of Rule 16(b0; and

e) tapes of conversations electronically recorded under Court Order pursuant to Section 2518 of Title 18, United States Code, or with the consent of a party to such conversation.

7. The Government is aware of its obligations under Brady v. Maryland, 373 U.S. 83 (1963) and will in the event such material becomes known make full disclosure to each effected defendant.

8. The Government accedes to providing all of the above information in order to expedite an already congested criminal docket of the Southern District of New York. Your deponent is of the opinion that the above represents all the information which the Government would be required to disclose upon pre-trial motions properly made by each defendant.

GPO 1972 O 476 478

WALTER G. BRANNON
Notary Public, State of New York
No. 24-0394500
Qualified in Kings County
Cert. filed in New York

9. No pre-trial severences or disclosure of the evidence upon which the grand jury relied is appropriate or warranted in the facts and circumstances of this case.

W. Cullen MacDonald

W. CULLEN MACDONALD
Assistant United States Attorney

Sworn to before me this
14 day of March, 1975.

Laurence A. Fillet

NOTARY PUBLIC

[illegible] York
[illegible] County
[illegible], 1976

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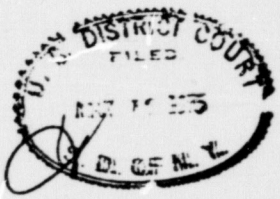
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GPO 1972 O 474-479

WALTER G. BRANNON
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Term Expires March 30, 1975

A 1121

FORD MOTION FOR DISCOVERY
AND INSPECTION
(March 12, 1975)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

-v-

JOE TRUMAN BOYD, et al.,

Defendants.

75 Cr. 140 (MP)

REQUESTS FOR DISCOVERY AND INSPECTION PURSUANT TO FRCP RULE 16

----------X

S I R :

PLEASE TAKE NOTICE that defendant Robert E. Ford hereby requests of the Government discovery and inspection, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, as set forth in the annexed schedule.

PLEASE TAKE FURTHER NOTICE that the Government is requested to respond to the annexed requests promptly and in writing, indicating which items and materials are being furnished with respect to each listed request of defendant.

Yours, etc.

ARANOW, BRODSKY, BOHLINGER,
BENETAR & EINHORN

By: Anthony L. Ferrigno
(A Member of the Firm)
Attorneys for Defendant
Robert E. Ford

To: PAUL J. CURRAN
United States Attorney
United States Court House
Foley Square, New York

(40)

SCHEDULE OF DISCOVERY AND INSPECTION
REQUESTED BY DEFENDANT FORD

1. All written or recorded statements made by defendant Ford, in whatever form, including notes, transcripts, logs and recordings, or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the Government, including, but not limited to, any statements of third parties incorporating alleged statements by defendant Ford. For purposes of this request the "Government" includes the Securities and Exchange Commission.

2. Grand Jury testimony of defendant Ford.

3. For purposes of exercising his rights under Rule 14 of the Federal Rules of Criminal Procedure, defendant Ford requests copies of any statements or confessions made by any of the co-defendants or alleged co-conspirators which the Government intends to introduce in evidence at the trial.

4. Results or reports of any accounting audits or tests, or other scientific tests or experiments, including appraisals and geological studies and reports made in connection with this case, or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the Government. For the purposes of this request the "Government" includes the Securities and Exchange Commission.

5. All documents furnished by or on behalf of defendant Ford to the Government, including the Securities and Exchange Commission, relating to Select Enterprises, Inc., or to any predecessor or successor entity.

6. Any criminal convictions or pending indictments of Government witnesses, and of the other defendants named in the indictment and any alleged co-conspirators (whether or not named in the indictment).

7. All documents which the Government intends to use at trial in proving its case against defendant Ford (See, e.g., United States v. Tanner, 279 F. Supp. 457, 470-471 (N.D. Ill. 1967)).

8. All title opinions, legal opinions or other documents prepared or signed by defendant Ford.

9. Statements of witnesses or other third parties relating to defendant Ford or this case, other than statements of such persons which may have been given directly to Government agents.

10. The names and addresses of all witnesses whose testimony will be offered by the Government at trial to prove that defendant Ford, in particular, was a member of the conspiracy or committed the crimes alleged in the indictment.

11. All evidence in the Government's possession, custody or control which may tend to exculpate defendant Ford

or establish his innocence of the crimes charged or to establish any defense thereto, or which is discoverable under the doctrine of Brady v. Maryland, 373 U.S. 83 (1963), and related cases, including, but not limited to, evidence tending to establish any bias of Government witnesses against defendant Ford or any motive of Government witnesses to implicate defendant Ford in the crimes charged.

12. Copies of all testimony (or notes relating thereto in the event that no formal transcript was made) of defendants Boyd and Goodloe and any other defendants given to the Securities and Exchange Commission by said persons in the presence of defendant Ford and false documents, if any, delivered by them to the Securities and Exchange Commission while defendant Ford was acting as their counsel if the Government intends to offer evidence at the trial that defendant Ford knew or had reason to know such testimony or documents were false and/or that defendant Ford participated in the furnishing of such false testimony or false documents.

13. All books, papers, documents and tangible objects which are in the possession, custody or control of the Government (including the Securities and Exchange Commission), and which are either expressly referred to or relate to the allegations contained in the following paragraphs and counts of the indictment:

Count 1:

Par. 1
Par. 2
Par. 3(b)
Par. 3(f)
Par. 3(h)
Par. 3(j)
Par. 4(2)
Par. 4(4)
Par. 4(5)
Par. 4(6)
Par. 4(7)
Par. 4(8)
Par. 4(9)
Par. 5
Par. 6
Par. 7
Par. 8
Par. 9

Counts 2 through 28 (including each letter referred to and the envelope in which it was mailed)

Counts 29 through 51 (including any stock power relating thereto)

Counts 52 and 53

A 1126

ENDORSED ORDER (March 13, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOE TRUMAN BOYD, et al.,

Defendants.

MICROFILM
MAR 13 1975

d

75 Cr 140 (MP)
(Robert E. Ford)

An affidavit dated March 10, 1975 was filed in this case by the Government (prepared at the Court's instance in view of the repetitive demands by the several defendants) to have uniform rulings on discovery and particulars. This motion is limited to the relief consented to by the Government in said affidavit and otherwise in all respects denied

So Ordered
March 13, 1975

Milton Pollack
USDJ

Copy Received
Attorney
5/12/75

REQUESTS FOR DISCOVERY
AND INSPECTION PURSUANT
TO FRCP RULE 16

ARANOW, BRODSKY, BOHLINGER,
BENETAR & EINHORN
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(212) 889-1470

ATTORNEYS FOR Robert E. Ford

U.S. DISTRICT COURT
FILED
MAR 13 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA

-v-

JOE TRUMAN BOYD, et al

Defendants

----------x

75 Cr. 140 (MP)

DEFENDANT FORD'S REQUEST FOR PARTICULARS PURSUANT TO FRCP RULE 7(f)



S I R :

PLEASE TAKE NOTICE that, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, defendant Robert E. Ford requests the following particulars with respect to the indictment:

COUNT ONE

As to par. 1:

(a) State the date, place and manner in which (including the names of all persons known to be present) defendant Ford is alleged to have entered into the conspiracy charged.

(b) State the names and addresses of all unindicted co-conspirators.

(c) State the jurisdictions, other than the Southern District of New York, in which defendant Ford is charged with having conspired.

(d) Identify the "other persons to the Grand Jury known," with whom defendant Ford is charged with having conspired.

As to par. 2:

(a) Set forth the names (including predecessors and

successors), address and states of incorporation of all "shell" corporations.

(b) Identify the sales, pledges and distributions of stock by defendant Ford, including dates, names of the parties, number of shares, name of the subject corporation and the price or other consideration, if any, received by Ford.

(c) State the manner in which defendant Ford is claimed to have artificially inflated the price of the shell corporation.

(d) Specify the profit allegedly realized by defendant Ford, including the form of any compensation paid to him or for his benefit.

(e) Specify the "material information required to be furnished by law" which was allegedly not provided.

As to par. 3:

(a) Set forth any "means", other than those listed in this paragraph, by which the alleged conspiracy was carried out.

(b) With respect to paragraph 3(a), state the name of the company whose stock was acquired, the date of acquisition, from whom the stock was acquired, the manner in which the dormant shell was reactivated, the manner in which defendant Ford participated in such conduct and whether the Government alleges that defendant Ford knew of the alleged acts of defendant Titlow at or prior to the time they occurred.

(c) With respect to paragraph 3(b), identify the statement referred to and state in what respects the statement was false.

(d) With respect to paragraph 3(d), set forth the date and place of defendant Ford's alleged agreement to distribute or to participate in the distribution of Select stock, the names of those defendants and co-conspirators to whom defendant Ford allegedly communicated his agreement, whether said agreement was reduced to writing and the manner in which he would and did act in the alleged distribution.

(e) With respects to paragraphs 3(e), (f) and (g), state -

(i) whether defendant Ford transported unregistered Select securities in interstate commerce and, if so, set forth the particulars of each such incident charged.

(ii) whether defendant Ford, directly or indirectly, placed assets of insubstantial value or unproven worth into Select and, if so, set forth the particulars of each such incident charged.

(iii) whether defendant Ford sold or attempted to sell any shares of Select, and, if so, whether in writing or orally, the number of shares, the name and address of each offeree or purchaser and the date and place of the offer or sale.

(iv) whether defendant Ford ever purchased or attempted to purchase any shares of Select, and, if so, whether in writing or orally, the number of shares, the name and address of each seller or other transferor and the date and

place of each such transaction charged.

(v) whether defendant Ford ever manipulated the market price of Select's stock, caused any parties to become market makers for Select stock, sold or distributed Select stock at less than its quoted market value or participated in "crossed" trades or "wash" sales and, if so, set forth the particulars, including amounts, names, dates and places,of each such act charged against defendant Ford.

(f) With respect to paragraph 3(h) -

(i) identify all allegedly false, fictitious and fraudulent statements, representations, writings, documents and entries, stating whether made, prepared or used by defendant Ford, and with respect to each, specify the date, place and person to whom delivered or made and the specific respects in which they were false, fictitious or fraudulent.

(ii) identify all SEC investigations relating to Select, the dates of such investigations and hearing relating thereto, whether written transcripts were made, the names of the parties present, including representatives of the SEC, and the place of such hearings.

(iii) identify the manner in which defendant Ford is claimed to have induced the SEC not to suspend trading in Select stock.

(iv) identify each fraudulent or back-dated writing referred to in paragraph 3(h)(i) of the indictment and state defendant Ford's alleged role in its preparation, delivery or use.

(v) specify the false oral testimony and unsworn statements referred to in paragraph 3(h)(ii)of the indictment, the respects in which they were false, the date and place of said testimony and statements, by whom and to whom given or made and what connection, if any, it is claimed defendant Ford had with the giving of such testimony and statements.

(g) With respect to paragraph 3(j) of the indictment, identify the financial statements referred to and specify in what respects, other than those stated, they were false and misleading.

(h) With respect to paragraph 3(j)(i) of the indictment, identify the assets shown in said financial statements which had not, in fact, been transferred to Select as of the date of said statements and defendant Ford's role in connection therewith, including whether defendant Ford is claimed to have had knowledge of the failure to transfer said assets and the dates said assets were in fact transferred to Select if in fact they were transferred.

(i) With respect to paragraph 3(j)(ii) of the indictment, identify the assets set forth in the balance sheets which were fraudulently inflated and defendant Ford's connection therewith, if any.

As to par. 4:

(a) State whether the Government charges the commission of any overt acts other than those listed in paragraph 4 and, if so, set forth particulars as to each such act, including names, dates, places and Ford's specific role, if any, in the commission of those acts.

(b) State the date of commission of the first overt act in furtherance of the alleged conspiracy and identify that act.

(c) State the date of commission of the last overt act in furtherance of the alleged conspiracy and identify that act.

(d) Identify all alleged overt acts committed by defendant Ford in the Southern District of New York.

(e) With respect to paragraph 4(7) of the indictment, identify the allegedly false and misleading certified financial reports, the particular respects in which each was false or misleading, the place of their preparation and issuance, and defendant Ford's specific role, if any, in their preparation or issuance.

(f) With respect to paragraph 4(8) of the indictment, state the periods of suspension of trading of Select stock and the reasons therefor and identify the false and fraudulent information supplied by defendant Ford to the Securities and Exchange Commission, the dates said information was supplied, to whom and the place where it was supplied and the particular respects in which any information supplied by defendant Ford was false or fraudulent.

(g) With respect to paragraph 4(9) of the indictment, identify the false or misleading information referred to and

state in what respects it was false or misleading, the identify of those to whom it was furnished and Ford's specific role, if any, in the furnishing of such information.

As to par. 5:

(a) Identify the "matter within the jurisdiction of a department and agency of the United States'which is referred to.

(b) Identify the tricks, schemes and devices referred to and defendant Ford's specific role in them, if any.

(c) Identify the material facts allegedly sought to be concealed and covered up.

(d) Identify the false, fictitious and fraudulent statements and representations, false writings and documents and fictitious and fraudulent entries referred to and state in what respects they were false, fictitious and fraudulent.

As to pars. 6 and 7:

Identify any defendant or co-conspirator with whom defendant Ford allegedly discussed or agreed upon the commission of the acts referred to.

As to par. 8:

(a) Identify any defendant or co-conspirator with whom defendant Ford allegedly discussed or agreed upon the commission of the acts referred to.

(b) Identify the devices, schemes and artifices to defraud referred to and defendant Ford's specific role, if any.

(c) Identify the untrue statements and omissions referred to and state in what respects the statements referred to were untrue and defendant Ford's specific role, if any.

(d) Specify the transactions, practices and courses of business constituting fraud and deceit referred to and defendant Ford's specific role, if any.

As to par. 9:

Identify any defendant or co-conspirator with whom defendant Ford allegedly discussed or agreed upon the commission of the acts referred to.

COUNTS TWO THROUGH TWENTY-EIGHT

As to par. 1 (unnumbered, p. 8 of the indictment):

(a) Identify the scheme and artifice to defraud referred to.

(b) Specify the false and fraudulent pretenses and promises referred to and defendant Ford's specific role, if any.

(c) Specify the names and addresses of the issuers, purchasers and lenders that were defrauded.

As to par. 3:

(a) With respect to the letters referred to in Counts Two through Twenty-Eight state -

(i) whether defendant Ford knew of or approved any of such letters before mailing and, if so, which ones.

(ii) the place and date of mailing of each such letter.

(iii) the place and date of receipt of each such letter.

(iv) whether defendant Ford himself mailed any of such letters.

(v) whether defendant Ford caused any of such letters to be mailed, and, if so, the manner in which it is claimed he did so.

(b) With respect to each telephone call referred to in Counts Two through Twenty-Eight state -

(i) whether defendant Ford made or was a party to the call, and, the date, time and place of the call and the identity of the parties to the call.

(ii) as to the telephone numbers listed, the location of the telephone, the identity of the party in whose name each telephone was listed, the identity of the parties to each telephone conversation, whether the Government has transcripts or recordings of any of the telephone conversations alleged and the manner in which any such transcripts or recordings were obtained or prepared.

COUNTS TWENTY-NINE THROUGH FORTY

As to par. 1:

(a) Identify the devices, schemes and artifices to defraud referred to and defendant Ford's specific role, if any.

(b) Identify the untrue statements or omissions

referred to and state in what respects the statements referred to were untrue and defendant Ford's specific role, if any.

(c) Specify the transactions, practices and courses of business constituting fraud and deceit referred to and defendant Ford's specific role, if any.

As to par. 3:

(a) Identify the "means and instruments of transportation and communication in interstate commerce and the mails" referred to, with respect to each of the transactions designated in Counts Twenty-Nine through Forty, and specify which were used or caused to be used by defendant Ford.

(b) Specify which of the transactions designated in Counts Twenty-Nine through Forty were purchases of Select stock and with respect to each such purchase identify the Seller (including address) and state the place of purchase and whether oral or in writing.

(c) With respect to those transactions designated in Counts Twenty-Nine through Forty which were other than purchases of Select stock, identify the nature of the transaction (e.g. loan), the place of the transaction and whether oral or in writing.

(d) State whether the Government claims that defendant Ford was a party to any of the transactions designated in Counts Twenty-Nine through Forty and, if so, specify the transactions and his role.

(e) Identify by name and address the record and beneficial owners of the shares referred to in Counts Twenty-Nine through Forty.

COUNTS FORTY-ONE THROUGH FIFTY-ONE

(a) Identify the "means and instruments of transportion and communication in interstate commerce and the mails" referred to, with respect to each of the transactions designated in Counts Forty-One through Fifty-One, and specify which were used or caused to be used by defendant Ford.

(b) Specify which of the transactions designated in Counts Forty-One through Fifty-One were sales of Select stock and with respect to each such sale identify the seller (including address) and state the place of sale and whether oral or in writing.

(c) With respect to those transactions designated in Counts Forty-One through Fifty-One which were other than sales of Select stock, identify the nature of the transaction (e.g. loan), the place of the transaction and whether oral or in writing.

(d) State whether the Government claims that defendant Ford was a party to any of the transactions designated in Counts Forty-One through Fifty-One and, if so, specify the transactions and his role.

(e) Identify by name and address, the record and beneficial owners of the shares referred to in Counts Forty-One through Fifty-One.

COUNTS FIFTY-TWO AND FIFTY-THREE

(a) Identify the "matter within the jurisdiction of the department and agency of the United States" which is referred to.

(b) Specify in what respects, other than as alleged in the indictment relative to Counts Fifty-Two and Fifty-Three, the writings and documents referred to contained false, fictitious or fraudulent statements and entries.

(c) With respect to the documents referred to in Counts Fifty-Two and Fifty-Three, state whether they were prepared in whole or in part by defendant Ford and, if so, specify the extent of his participation and the place and date of his participation.

(d) Identify, by name and address, the persons to whom the documents referred to were delivered or exhibited and specify which of the documents, if any, were delivered or exhibited by defendant Ford.

(e) Specify which of the documents was back-dated, by whom, when and where and set forth the true date of the document.

(f) Specify whose signatures were unauthorized and in what respects they were unauthorized.

(g) Identify the "non-existent exhibits and attachments" referred to.

(h) Identify the specific "unauthorized warranties and representations as to third persons" referred to and state in what respects the warranties and representations were unauthorized.

(i) Identify the specific "misdescriptions of the value of Select shares" referred to and state the true value.

ALL COUNTS

State whether any communication to or from defendant Ford was intercepted by electronic surveillance or otherwise and, if so, whether the interception or surveillance was pursuant to court order and the details relating thereto.

Dated: March 14, 1975.

Yours, etc.

ARANOW, BRODSKY, BOHLINGER, BENETAR & EINHORN

BY: Gustave L. Terzigni
(A Member of the Firm)
Attorneys for Defendant, Robert E. Ford
469 Fifth Avenue
New York, New York 10017

TO: PAUL J. CURRAN, ESQ.
United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

ENDORSED ORDER (March 18, 1975)

75 Cr. 140 (MP)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JOE TRUMAN BOYD, et al

Defendants

DEFENDANT FORD'S REQUEST FOR PARTICULARS PURSUANT TO FRCP RULE 7(f)

ARANOW, BRODSKY, BOHLINGER, BENETAR & EINHORN
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Attorneys for Defendant Robert E. Ford

COPY RECEIVED
MAR 14 1975
PAUL J. CURRAN
U.S. ATTORNEY
SO. DIST. OF N.Y.

MICROFILM
MAR 19 1975

U.S. DISTRICT COURT
FILED
MAR 19 1975
S.D. OF N.Y.

75 Cr 140(MP)
(Robert E. Ford).

Granted to the extent consented to by the Government in its affidavit filed herein, prior to March 10, 1975, (prepared at the Court's instance to have uniform rulings on disclosure and particulars) and otherwise in all respects, denied

So Ordered
March 18, 1975

Milton Pollack
USDJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

UNITED STATES OF AMERICA	:	
-v-	:	NOTICE OF MOTION FOR SEVERANCE
JOE TRUMAN BOYD, et al.,	:	75 Cr. 140 (MP)
Defendants.	:	

U.S. DISTRICT COURT FILED JUN 6 1975 S.D. OF N.Y.

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Richard Conway Casey, upon the memorandum of law submitted herewith, and upon the indictment and all prior proceedings, the defendant Howard L. Brookshire will move this Court at Room 519, United States Courthouse, Foley Square, New York, New York, on the 13th day of June, 1975, at 2:00 p.m., or as soon thereafter as counsel can be heard, for an order severing his case from that of the fifteen co-defendants pursuant to Rule 14 of the Federal Rules of Criminal Procedure, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 4, 1975

Yours, etc.,

BROWN, WOOD, FULLER, CALDWELL & IVEY

By Richard Conway Casey
(A Member of the Firm)

Attorneys for Defendant
Howard L. Brookshire
One Liberty Plaza
New York, New York 10006
(212) 349-7500

To: W. Cullen MacDonald
Assistant United States Attorney
United States Courthouse Annex
Room 725
One St. Andrew's Plaza
New York, New York 10007

52

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
-v-	AFFIDAVIT IN SUPPORT OF MOTION FOR SEVERANCE AND IN OPPOSITION TO MOTION FOR CONSOLIDATION
JOE TRUMAN BOYD, et al.,	
Defendants.	75 Cr. 140 (MP)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD CONWAY CASEY, being duly sworn, deposes and says:

1. I am a member of the firm of Brown, Wood, Fuller, Caldwell & Ivey, attorneys for defendant Howard L. Brookshire, and am familiar with the above-captioned matter.

2. I submit this affidavit in support of the within motion for a severance, made pursuant to Rule 14 of the Federal Rules of Criminal Procedure, and in opposition to the motion for the consolidation of the Indictments 75 Cr. 140 and 346 (MP).

SEVERANCE

3. Indictment 75 Cr. 140 charges defendant Brookshire and fifteen co-defendants with conspiracy, mail, wire and securities fraud, sales of unregistered securities, and the making of false statements to the Securities Exchange Commission. Yet, of the numerous allegations contained in the fourteen pages of the indictment, the only specific factual allegation against

defendant Brookshire is that he "sold, pledged, and otherwise disposed" of 10,000 shares of Select Enterprises Inc. ("Select") stock to the Fort Worth National Bank. None of the alleged overt acts committed in furtherance of the conspiracy is alleged to have been committed by defendant Brookshire, and, upon information and belief, he was not a party to any of the alleged fraudulent mail and wire communications.

4. The indictment sets out the alleged conspiracy hereinvolved as one:

> ... to obtain control of a "shell" corporation without any substantial assets, inflate artificially its price, and sell, pledge and distribute the shares at enormous profits to members of the public without material information required to be furnished by law.

Our investigation of this case indicates that that defendant Brookshire had no connection with or involvement in the alleged conspiracy to obtain control of a "shell" corporation. Indeed, his only involvement with the activities alleged in the indictment was that he sent 10,000 shares of Select stock registered in the name of R. B. Goodloe, at Mr. Goodloe's request, to the Fort Worth National Bank as collateral on a loan.

5. The Government has indicated that a joint trial of this case will take a minimum of six weeks. Upon information and belief, the vast majority of that time will be taken up presenting evidence against defendant Brookshire's co-defendants, and only a day at most presenting evidence of defendant Brookshire's alleged wrongdoing.

6. We have examined the voluminous documents which the Government has marked as exhibits for trial. Only about five percent of those documents, at most, even arguably relates to the alleged wrongdoing of the defendant Brookshire.

7. If a joint trial is permitted, the small amount of testimony relevant to defendant Brookshire will be presented to the jury with the much larger mass of evidence relevant to numerous activities by other defendants in which he was not involved. This will greatly prejudice defendant Brookshire since the evidence against him will be hopelessly confused with the much more serious, extensive and arguably incriminating evidence against the other defendants, making separate consideration by the jury of the allegations against him, as required by due process, impossible as a practical matter.

8. In fact, the above-quoted language of the indictment sets out not one conspiracy but three: first, to obtain control of a "shell" corporation; second, to artificially inflate its price; and third, to fraudulently distribute its shares. The indictment, the Bill of Particulars, and the other information provided by the U. S. Attorney make it very clear that this prosecution is brought against defendant Brookshire only with respect to the third alleged conspiracy. Since the separate conspiracies do not constitute "the same act or transaction or ... same series of acts or transactions", as required by Rule 8 of the Federal Rules of Criminal Procedure, a joint trial

of them would confuse the jury and greatly prejudice the defendant Brookshire.

9. A joint trial would also deny defendant Brookshire the right to call the other defendants as witnesses in his behalf. Upon information and belief, the testimony of those co-defendants who were directors and officers of Select would tend to exculpate the defendant Brookshire and would be more likely to be available in a separate trial than in a joint one.

10. A joint trial would require defendant Brookshire to leave his home in Texas for a minimum of six weeks, the time which the Government has indicated a joint trial would take, resulting in great personal and economic hardship which could be avoided by granting a severance. It is the deponent's estimate that a separate trial of the charges against defendant Brookshire would take no more than one or two days and, thus, not materially prejudice the interests of judicial economy.

11. It is submitted that the factors set out above individually and collectively require a severance of the charges against defendant Brookshire in the interests of justice and in order to provide him with the fair trial required by due process.

CONSOLIDATION

12. Consolidation of Indictments 75 Cr. 140 and 346 (MP) is improper since the factual allegations against defendant Brookshire are dissimilar from those against defendant Michael Gardner. Thus, consolidation would result in great prejudice to defendant Brookshire, as set out hereinabove.

WHEREFORE, it is respectfully submitted that defendant Brookshire's motion for severance be granted and the motion for consolidation be denied, together with such other relief as this Court may deem just and proper.

Richard Conway Casey

Sworn to before me
this 4th day of June, 1975.

Joseph P Bonici

JOSEPH P BONICI
Notary Public, STATE OF N.Y
No: 43-4506750
Qualified Richmond County
Certificate Filed IN New York County
Commission Expires 3/30/77

A 1147

MEMORANDUM ORDER GRANTING BROOKSHIRE SEVERANCE (July 21, 1975)

MEMORANDUM

United States of America v. Joe Truman Boyd and
Howard L. Brookshire 75 CR. 140 (MP)

The defendant Brookshire has moved for a severance of his case from that of the co-defendants named herein pursuant to Rule 14 of the Federal Rules of Criminal Procedure.

Brookshire seemingly has met his burden of demonstrating that some substantial prejudice would result from a joint trial.

The general rule that persons indicted together should be tried together when the crimes charged against all defendants may be established by the same evidence does not apply to Brookshire because of his limited connection with the overall conspiracy and the brief period of his alleged involvement. To include him in a joint trial might result in engulfing him by inapplicably broad proof when his is only a narrow association at best.

Severance granted accordingly to Howard L. Brookshire. See, e.g., United States v. Kelly, 349 F.2d 720 (2d Cir. 1965), cert. denied 384 U.S. 947 (1966).

SO ORDERED.

July 21, 1975

Milton Pollack
U. S. District Judge

MICROFILM
JUL 22 1975

U.S. DISTRICT COURT
FILED
JUL 22 1975
S. D. OF N. Y.

FORD MOTION FOR SEVERANCE OF DEFENDANT
(June 11, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

UNITED STATES OF AMERICA	:	75 Cr. 140
-v-	:	(Pollack, J.)
JOE TRUMAN BOYD, JAMES CALVIN JOINER, ERNEST DARWIN GOODLOE, ROBERT E. FORD, SELWYN WEBER, EMERSON F. TITLOW, ERNEST R. MULLENAX, M. S. KNISELEY, HOWARD L. BROOKSHIRE, WILLIAM WAYNE BARNETT, MARVIN J. RAPPAPORT, STANLEY SCHLEGER, EDWARD VANASCO, ALAN SEGAL ROGER BISSETT, and JOHN WELLS	:	NOTICE OF MOTION
Defendants	:	

U.S. DISTRICT COURT FILED JUN 12 1975 S. D. OF N. Y.

S I R:

PLEASE TAKE NOTICE that, upon the annexed affidavit of PAUL K. FELDMAN, sworn to on June 11, 1975, the indictment and prior proceedings in this action and the record of proceedings in this Court in the action entitled Securities and Exchange Commission v. Select Enterprises, Inc., et al., 70 Civ. 3795, the undersigned will move this Court, in Room 519, United States Court House, Foley Square, New York, New York, on June 27, 1975, at 2:00 P.M., for an order, pursuant to Rule 14 of the Federal Rules of Criminal Procedure, directing that the trial of defendant Robert E. Ford in this action be severed from the trial of the other defendants, together with such

other or further relief as the Court may deem proper.

Dated: New York, N.Y.
June 11, 1975.

Yours, etc.

ARANOW, BRODSKY, BOHLINGER, BENETAR & EINHORN

By: _____
(A Member of the Firm)
Attorneys for Defendant Robert E. Ford
469 Fifth Avenue
New York, N.Y. 10017
(212) 889-1470

TO: HON. PAUL J. CURRAN
United States Attorney
One St. Andrews Plaza
New York, N.Y. 10007

A 1150

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	75 Cr. 140 (Pollack, J.)
-v-	:	AFFIDAVIT
ROBERT E. FORD, et al.	:	
Defendants	:	

STATE OF NEW YORK)
)SS
COUNTY OF NEW YORK)

PAUL K. FELDMAN, being duly sworn, deposes and says:

1. I am associated with the firm of Aranow, Brodsky, Bohlinger, Benetar & Einhorn, attorneys for Robert E. Ford, one of the defendants in this action, and respectfully submit this affidavit in support of Ford's motion for a severance to bring to the Court's attention the following facts and information which have been assembled to date in the course of our representation of defendant Ford.

2. For purposes of discovery, I have on several occasions visited the offices of the United States Attorney and made photocopies of documents provided by Assistant U. S. Attorney MacDonald in connection with this case, including defendant Ford's Grand Jury testimony and extensive testimony and other papers relating to the prior enforcement proceeding brought in this Court by the Securities and Exchange Commission arising out of the same facts underlying the present indictment. (Securities and Exchange Commission v. Select Enterprises, Inc., et al., 70 Civ. 3795). I have also received and reviewed copies

of the affidavit of Mr. MacDonald dated March 10, 1975, and the Government's bill of particulars dated May 15, 1975, both of which have been filed with the Court.

3. A review of the foregoing materials indicates quite clearly that Ford had little or no connection with the conspiracy alleged in the indictment, that he would be unfairly prejudiced by a mass trial with fifteen or sixteen co-defendants and that he should be granted a severance in the interests of justice.

4. The specific overt acts of the indictment as they allegedly relate to Ford and as supplemented by the Government's bill of particulars are as follows:

(a) On March 28, 1970, defendant Ford with defendants Boyd, Barnett and Kniseley allegedly prepared or caused the issuance of a false and misleading certified financial statement in Abilene, Texas.

(b) On April 17, 1970, defendants Boyd and Ford, in Fort Worth, Texas, allegedly supplied false and fraudulent information to the Securities and Exchange Commission.

These are the only two specific overt acts allegedly performed by defendant Ford which are set forth in the fourteen-page indictment, which names sixteen defendants and alleges a conspiracy, commencing on or about October 1, 1969 and continuing up through the date of the indictment (February 10, 1975), to gain control of a shell corporation (Select Enterprises, Inc.) without any substantial

assets, inflate artificially its price, and sell, pledge and distribute its shares to the public at enormous profits without providing material information required to be furnished by law. In addition to a general conspiracy count, the indictment contains 52 individual counts alleging mail and wire fraud, unlawful distribution of unregistered securities, fraudulent transfer of securities and the giving of false statements and documents to the Securities and Exchange Commission.

5. Ford is a practicing attorney who lives and practices in Abilene, Texas. He has been actively and continuously engaged in the practice of law for more than 25 years specializing in real estate and litigation matters. He has never been convicted of any crime or misconduct of any kind and has an unblemished record.

6. Ford was never an officer or director of Select. He never purchased, pledged, sold or attempted to purchase, pledge or sell any shares of Select. He never sought to encourage third parties to purchase, sell or pledge shares of Select. The only shares of Select Ford ever acquired consisted of 6,700 shares out of the more than 1,500,000 shares outstanding. Ford received these shares as a legal fee for legal services rendered to defendant Goodloe in representing him in connection with the sale by Goodloe to Select of certain mining properties in New Mexico and oil and gas leases in Texas. These shares which Ford received contained an investment legend. According to the stock transfer records provided by the Government, Ford

received his shares on March 16, 1970, long after the alleged conspiracy was in full bloom.

7. At the request of Mr. Boyd, an officer of Select, Ford prepared title opinions addressed to Select relating to the New Mexico mining claims and the Texas oil and gas leases conveyed by Goodloe to Select. Also at the request of Mr. Boyd, Ford spent two days checking the title to certain land in California and on his return reported that additional documents were required including title opinions of California counsel and title policies from California companies. He also took acknowledgements for certain deeds for the California land. For his services in California and the two title opinions referred to in paragraph 6 above, Ford submitted a bill for $2,500 to Select. He received a check in that amount which was dishonored and was never made good.

8. The questions propounded to Ford before the Grand Jury indicated that the Government believes that certain of the conveyancing documents and title opinions relating to the New Mexico and Texas transactions were backdated or otherwise fraudulent and that the assets conveyed in these transactions were carried on Select's books and financial statements at inflated values. However, the Government's bill of particulars does not specify which documents are claimed to have been false or the manner in which they are claimed to have been fraudulent. It is believed that the delay in recording certain of these documents, which in no event was the responsibility of defendant

Ford, gives rise to the erroneous conclusions of the Government as to backdating. In any event, defendant Ford never gave, nor was requested to give, an opinion as to the value of the assets conveyed; nor would one expect such an opinion from an attorney. In fact, while Select obtained numerous appraisals and geological reports as to the value of these and other assets, these were obtained from persons other than Ford.

9. Ford never prepared or rendered a legal opinion regarding the free trading nature of Select stock.

10. Ford's limited connection with those few of the transactions referred to in the indictment with which he did have any connection was solely as legal counsel. Ford was engaged as stated above to serve as an attorney on specific matters. His name never appeared on any financial statement, press release or other communication to stockholders of Select.

While Ford did appear as counsel for defendants Boyd, Goodloe and Barnett before the SEC for a limited period, he again acted at all times as an attorney and was never advised that he was a target of the SEC's inquiry. On April 17, 1970, Ford advised Mr. Hewitt of the SEC's Fort Worth Regional Office that Godfrey Sullivan, Esq. was to replace him as counsel for Select and Mr. Boyd before the SEC effective immediately.

11. The telephone records and copies of letters provided by the Government confirm that Ford neither made nor received any of the telephone calls nor was he the addressor

or addressee of any of the letters referred to in the indictment (Counts 2 - 28 of the Indictment). Nor was Ford a party to any of the sales, pledges or dispositions of Select stock referred to in Counts 29 - 51 of the Indictment. The two documents referred to in Counts Fifty-Two and Fifty-Three of the Indictment, copies of which have been furnished by the Government, relate to two proposed acquisitions by Select -- one of a hotel in Nevada (in which according to the testimony in the prior enforcement action defendant Segal had an interest) and the other of a furniture company. Neither agreement was either prepared by or refers to defendant Ford who disclaims all connection therewith.

12. As indicated above, the Securities and Exchange Commission commenced a prior enforcement action in this Court against Select and twenty other defendants arising out of the same facts underlying this indictment. Records and documents relating to that prior civil action (SEC v. Select Enterprises, Inc., et al., 70 Civ. 3795) are held by the United States Attorney's office and I have made copies of significant portions thereof. Of the twenty-one defendants named in the prior civil proceeding, nine are defendants in this criminal proceeding and two additional defendants in the prior civil proceeding are unindicted co-conspirators in the present action. Ford was not a defendant and was not charged with any wrongdoing in the prior civil proceeding.

13. The SEC's complaint in the prior civil action was filed on August 31, 1970 and followed an intensive investi-

gation by the SEC. The transcript of the testimony taken on the SEC's motion for a preliminary injunction in the prior civil action covers 618 pages. Thirteen witnesses testified in the prior civil action, including two SEC investigators and an SEC engineer. Three defendants in the present proceeding testified, Messrs. Segal, Boyd and Wells,as well as Segal's secretary and six brokers. The record of that proceeding does not disclose any evidence of Ford's role in any criminal conspiracy relating to Select.

14. The fourteen-page complaint in the prior civil action does not mention defendant Ford. The sixteen-page affidavit and four-page supplemental affidavit submitted in the prior action by Meyer Goldman, an investigator employed by the SEC who participated in its investigation of Select, do not mention Ford in any way.

15. The above mentioned affidavits of Meyer Goldman, the memoranda and pleadings of the SEC and the testimony taken in the prior proceeding do reveal who the SEC believed were the central figures in the Select affair and Ford is not one of these persons. For example, the SEC complaint, at page 6, referred to defendant Joe Boyd as "the principal architect of the Select scheme". The SEC's memorandum, dated September 2, 1970, at page 3, referred to Boyd as "Select's largest stockholder". By stipulation dated October 8, 1970, defendant Jim Joiner acknowledged that "he is a promoter of Select and a partner of Boyd in matters relating to the formation and subsequent activities of Select". Defendant Kniseley was the

president of Select. The SEC's memorandum, at page 3, referred to defendant Alan Segal as "a past securities violator...the individual responsible for the creation of a public market in Select stock." At page 25 of the SEC's memorandum it was stated: "Boyd along with Joiner originated the manipulatory scheme, Segal executed it."

At page 33 of the decision of the Hon. Edward G. McLean in the prior action, dated October 13, 1970, it was stated: "I think it is perfectly clear that Select itself, and Boyd, Joiner and Kniseley as the prime movers in this, are responsible. I think that the two brokers who actively participated in making this market under these circumstances at Segal's request are also responsible." At page 35 of the opinion Judge McLean stated: "It seems to me that the people who are really responsible here and really should be involved in this case are Select, Boyd, Joiner, Kniseley, Azzarone, Karen, Economic, Karfunkel. And these other people seem to me to be peripheral characters that would require more evidence than I have at the moment." None of the documents supplied by the U.S. Attorney's office reflect that any new evidence exists which would implicate defendant Ford in the alleged conspiracy.

It should also be noted that at page 399 of his testimony in the prior civil proceeding, Boyd referred to persons who received the first shares of Select at no cost to them as his "associates" and others, such as Ford, who received shares at a later date for services rendered to his associates as "associates of associates".

16. It seems unfair to lump together persons on the periphery, associates of associates, in a mass trial asserting a criminal conspiracy allegedly going back over five or six years. This is particularly true following a prior enforcement action brought by the Government which did not name Ford, who is an attorney and whose only acts were those of an attorney.

17. Prejudice would inevitably result to defendant Ford in a mass trial before a jury listening to extensive testimony concerning the formation of a trading market for Select in New York with which Ford was obviously not connected.

According to the lengthy transcript of testimony in the prior civil proceeding this primarily involved defendant Segal, a past securities law violator, who dominated the trading market for Select using nominee accounts, crossed trades and wash-sales, and the New York brokers, Karfunkel and Azzarone, and their companies, Karen & Co. and Economic Planning. Karfunkel and Azzarone are unindicted co-conspirators in the present action.

John Wells, another defendant in the present action, was also a New York broker with whom Ford had no connection. The transcript of the civil proceeding (p. 534) indicates that administrative proceedings were commenced against Wells and identifies defendant Schleger (p. 39) as Segal's accountant and unindicted co-conspirator Stuart Schiffman (also a past securities law violator - see SEC v. Spectrum Ltd., 489 F. 2d 535 [2d Cir. 1973]) as Segal's attorney (p. 45). Furthermore,

as set forth in footnotes to the Court of Appeals' opinion in Spectrum, at least four prior SEC complaints have been filed against Schiffman and three against Michael Gardner, whose separate indictment the Government is seeking to have consolidated with this one. Gardner is referred to in the civil transcript (p. 52) as someone who had just gone out of business but was sharing Segal's office for several weeks. The SEC's memorandum dated September 2, 1970 in the prior action (p. 7) also refers to a John Dennett "a prior securities law violator" whose connection with these events is unknown to defendant Ford. Other defendants with criminal records, it is believed, include Vanasco and Joiner. It is not known how many other defendants have criminal records. It should also be observed that of the eleven telephone calls referred to in the present indictment, at least seven were made to defendant Segal and much of the correspondence involved the New York brokers, with all of whom Ford had no connection whatsoever.

18. Ford also had no connection with the acquisition of the shell corporation referred to in the indictment. According to the transcript in the civil action (pp. 15-22) this was accomplished as follows:

Defendant Titlow, a state Senator in Nevada, acquired a shell corporation, Goldfield Candelaria Corporation (Select's predecessor) in 1967. In January 1970, defendant Boyd purchased the shell, its stock certificates, minute books and records from Titlow for $40,000 with the aid of defendants

Joiner and Brookshire. The closing was held in Reno, Nevada at the law offices of defendant Roger Bissett. Thereafter Goldfield Candelaria's name was changed to Select and stock was issued to Boyd and ten of his associates. Select's minutes reflect that defendant Kniseley was elected president and Boyd vice president and defendants Kniseley, Weber and Goodloe were the directors of Select. The transfer agent, Nevada National Registrar, Inc., was a company of which defendant Titlow was president.

19. As discussed in the accompanying memorandum of law, defendant Ford should be granted a severance for the following reasons:

(a) Ford's connection with the transactions in issue is minute and does not justify the risk of prejudice to Ford which would result from a mass trial;

(b) The risk of prejudice and confusion as regards Ford is compounded by the fact that the indictment, which purports to charge a single conspiracy, in reality involves multiple conspiracies;

(c) Under the Bruton rule the almost certain introduction of post-conspiratorial statements by co-defendants would inevitably prejudice Ford, particularly in view of the complexity of the facts;

(d) In a joint trial the attorney-client privilege would prevent Ford from testifying or would unfairly

handicap him in testifying in his own defense; and

(e) A joint trial would deprive Ford of the exculpatory testimony of his co-defendants.

Paul K. Feldman

Paul K. Feldman

Sworn to before me this

11th day of June, 1975.

Kenneth D. Stein

Notary Public.

KENNETH D. STEIN
Notary Public, State of New York
No. 30-3826735
Qualified in Nassau County
Commission Expires March 30, 1977

A 1162

MEMORANDUM ORDER DENYING FORD SEVERANCE (July 21, 1975)

MEMORANDUM

United States of America v. Joe Truman Boyd and Robert E. Ford, et al 75 CR. 140(MP)

The defendant Robert E. Ford moves for a severance of the indictment against him from the trial of the other defendants herein. He has failed to meet his burden of demonstrating that substantial prejudice would result from a joint trial. The general rule that persons indicted together should be tried together when the crimes charged against all defendants may be proved by the same evidence therefore requires that defendant Ford's Rule 14 motion to sever be denied. See, e.g., United States v. Fantuzzi, 463 F.2d 683, 687 (2d Cir. 1972).

SO ORDERED.

Milton Pollack

July 21, 1975

Milton Pollack
U.S. District Judge

U.S. DISTRICT COURT FILED JUL 22 1975 S. D. OF N.Y.

MICROFILM JUL 22 1975

A 1163

United States of America vs. **United States District Court** for

JUDGMENT AND COMMITMENT

DEFENDANT: ROBERT E. FORD

THE SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. 75 CR. 140 MP

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: Dec. DAY: 2, YEAR: 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Laurence Goldman (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~/verdict of
[ ] NOT GUILTY. Defendant is discharged
[X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly engaging in conspiracy and in the matters charged in the substantive counts of the indictment in respect to the offer and sale of Select Enterprises Inc. stock, by use of means and instruments of transportation & communication in interstate commerce and by use of mails; employing artifices to defraud; obtaining money and property by material untrue statements; and engaging in fraudulent and deceitful practices upon the purchasers and holders of Select Securities as collateral. (Title 18, U.S. C., Sections 371, 1001, 1341 and 1343; Title 15, Sections 77e, 77q and 77x.)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE(5) YEARS on each of counts 1 to 53 inclusive to run concurrently with each other. Pursuant to Section 4208(a)(2) of Title 18, U.S. Code, defendant shall become eligible for parole at such time as the Board of Parole may determine.

Defendant advised of his right to appeal.

Bail pending appeal fixed at $20,000. cash or surety to be posted by December 11, 1975 at 10 A.M., or defendant is to surrender to the U.S. Marshal in Room 506 for service of sentence at that time.

SPECIAL CONDITIONS OF PROBATION

MICROFILM
DEC 9 1975

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT FILED DEC 2 1975 S. D. OF N.Y.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

Milton Pollack

MILTON POLLACK

(111)

Date Dec. 2, 1975

MR. SEGAL: Objection.

THE COURT: He may answer the question yes or no.

A Yes.

Q Who told you?

A Joe Boyd.

Q What happened next with respect to Select Enterprises after the note?

A Let's see. Shortly after that we received -- we again referring to Mr. Bickel and myself -- another financial statement from Select Enterprises.

Q Did anything happen before you received that financial statement?

A Let me think just a moment.

My memory escapes me as to this sequence here at this point.

(Pause)

I'm sorry. I have a sort of a mental blackout here suddenly.

Q Did you go anywhere before you received that financial statement?

A Oh, yes, yes, certainly. At that point --

Q Where did you go and who were you with?

A At that point I went to Abilene, Texas for a

meeting of the board of directors of Select.

Q Tell us who was there and where it took place.

A The meeting took place in the office of Mr. Robert Ford, an attorney, and at the meeting were myself, Mr. Boyd, Dr. Knisely, Mr. Ford, Selwyn Weber, Dr. Halvord Hensen, Ed Goodloe, Mr. Barnett. Those are all I recall.

Q Do you see Mr. Ford in the courtroom?

A Yes, I do.

Q Point him out, please.

A He is the gentleman in the gray suit --

MR. GOLDMAN: Identification conceded, your Honor.

Q Do you see Dr. Knisely in the courtroom?

A Yes. Dr. Knisely is over at the right, my right.

Q My extreme left?

A Yes.

Q Do you see Mr. Weber in the courtroom?

A Yes. This is Mr. Weber here in the blue suit.

Q Do you see Mr. Barnett in the courtroom?

A I'm not able to recognize Mr. Barnett. I only met him one time.

Q Do you see Mr. Goodloe in the courtroom?

A I'm also not able to recognize Mr. Goodloe.

Q Would you tell us, please, when this meeting began, how long it lasted, what happened at it?

A Well, the total meeting began, as I recall, in what is best described, I suppose, as early evening, around the dinner hour.

As I recall, when we arrived there, it was still light. And the meeting began as soon as everybody got there.

And a description was given of all of the --

Q You say a description was given. Who gave it?

A Well, may I put it this way? Each of the assets of Select was described by a different person, and I don't recall which was described by whom.

3 am

pgs

Q Would you tell us, please, what assets were described?

A There was discussion of oil properties.

Q What was said about that?

A Their location was described -- and I don't recall the location because I was not familiar with the country even then. Its potential -- the oil properties' potential was described, potential income.

Then the mica mine was described along with its future potential and information relative to how much mica could be taken from it, as I recall.

Q Do you remember whether it was stated where that mica mine was?

A Yes. That mica mine was in New Mexico.

Q Go on.

A Then there was a description of an office building in Midland, Texas, and also information was given relative to the income of the office building.

Q What information was given?

A I don't recall the exact details, but there were figures given as to gross and net income.

Q Go on.

A Then also a description was given of some land in California which was there -- I don't remember the name

of the valley, but it is in Southern California --and a description was given of that land and its value was stated.

That's about all I can recall of the descriptions of these various pieces of property.

I described the Economic Management Services.

Q What, if anything else, happened at that meeting?

A After the meeting itself, what I considered to be the actual board of directors' meeting was concluded, then some of those in atrendance -- not all, and I don't recall all of the names -- but some of those in attendance went to work separately. I was excused from the room and they continued to work for a long time.

Q Did any of them ever tell you what they worked at?

A I was told they were preparing --

MR. KRIEGER: I object to that, your Honor. Narrative hearsay.

THE COURT: We will pass that.

Q What was the next thing that happened after that?

A The next thing was back in Dallas when I received a copy of a new financial statement; that is,

you help me? Would you say "pro" means that it is not an actual statement of events but it reflects what might happen if certain other things happen?

A I will accept your explanation.

Q All right.

Then would you examine that and tell the jury whether or not you see any indication on the pro forma statement that you are examining that EMS was a part of Select Enterprises?

A No, there is nothing there about EMS being a part of it.

Q All right.

And at this time, in February 1970, there was just a possibility of EMS becoming a part of Select, and in effect you did not recognize at that time that it was a part of Select.

A Yes, that's right.

Q Now, who furnished to you the pro forma balance sheet that you have before you?

A Joe Boyd.

Q Now, with respect to the meeting that you testified earlier that you attended in Abilene on March 26th, 1970, I believe you stated that this was at the Ford Building, is that correct?

A I was told that it was at Mr. Ford's office.

Q Well, isn't there a big sign outside in front of the building saying "Ford Building"? Do you recall that?

A No, sir.

Q Do you recall that the building is a one-story structure and that there are offices on two sides of a hallway?

A Yes, I seem to recall that.

Q And, as you enter the front door, there is a large reception room?

A Yes, I remember that.

Q And as you proceed down the left side, or down the hallway and on the left side, there are several offices as you proceed down the hallway, is that correct?

A I believe so, yes. I have a rather vague memory of the physical structure, but I seem to know that's the way that is put together.

Q And Mr. Ford's office, you recall, is on the left side also.

A Yes.

Q And on down the hallway there is a large board meeting room, or at least a large legal law library with a large table similar to the one at which counsel

here are sitting, is that correct?

A Yes.

Q And further back there is a large reception or a large coffee area and lounging area, in the back of the building. And then on the right side of the hallway there are numerous offices, is that correct?

A I remember the coffee shop. I remember the hallway. I don't recall how many offices there are in the building.

Q Now, with respect to this meeting that you attended, you stated earlier that you were actually within the board meeting room, within the large room with the large table, is that correct?

A That's my recollection, yes, sir.

Q All right.

Now, on this occasion you stated, or earlier you stated, that Dr. Knisely was there, Mr. Boyd was there, Mr. Maxson was there, you were there, Mr. Ford was there; is that correct?

A That's correct.

Q All right.

I believe also that you stated that Mr. Barnett was there. I want to test your memory regarding that matter.

Did you not meet Mr. Barnett in another office in this building on the same occasion?

A I don't recall.

Q And do you recall that Mr. Barnett was not in this meeting? You stated earlier that he was. I want to test you specifically.

I believe when you came in you met Mr. Barnett in the back coffee shop, isn't that correct?

A I don't recall where I met him.

Q This is five years ago, isn't it?

A Yes.

Q And you cannot recall and tell this jury at this time whether Mr. Barnett was sitting in that board meeting room.

A In the actual conference room itself? No, I could not.

Q So the testimony that you gave earlier that he was in the board meeting, of course, was an inadvertent error, is that correct?

A I would say yes.

Q Let me refer back now to the board meeting.

On this occasion, I believe, while you were attending the board meeting, there were various acquisitions of property discussed, is that correct?

A Yes, that's correct.

Q And on this occasion were there presentations to the board of appraisal reports presented?

A Yes.

Q And with respect to the acquisition of the oil and gas property, did you hear and see presented to the board an appraisal report prepared by Mr. Joe Brown?

A The only thing that I can recall, that I feel confident of the recollection relative to these properties, is a discussion or a description of the properties themselves and information relative to their location and their value.

Q All right.

A And as to who presented which, or Mr. Brown, I don't recall in that much detail.

Q But you do recall that there were actually written appraisal reports, isn't that correct?

A No, I'm sorry, Mr. Rhodes. I don't have any clear recollection of what you refer to as written appraisal reports.

Q All right. There could have been, but you've forgotten.

A That would be correct.

Q Doctor, further, with respect to the Mica

Mine, do you recall whether or not there were actual written appraisals on the Mica Mine presented to the board?

A No, sir, I don't recall that either.

Q It could have been, but you've forgotten that?

A That is correct.

Q And with regard to the California property, do you recall whether or not actual written appraisals were presented to the board on that?

A No, I do not.

Q It could have been but you've forgotten?

A It could have been.

Q Now, do you recall whether or not there was actually a discussion and report to the board relative to the status of a title on the subject property? Do you recall title opinions being discussed?

A No, I do not, not title opinions, no.

Q Now, do you recall specifically that there were no discussions, whether or not there were any discussions, relative to any possible SEC investigation at the time of the board meeting?

A I recall no such discussion.

Q And you can tell the jury that there were none?

A May I put it this way: There were none in my

presence.

Q All right. That's what I'm asking you to testify to, what you know.

And at this time you were not advised of any possible SEC problems, were you?

A That's correct.

Q Now, I believe you stated that you prepared a press release after you received the financial statement on March 28th, or dated March 28th.

A If my memory serves me, it was after, but it could have been on the very same day.

Q At any rate, you prepared that in Dallas, is that correct?

Q And then you attached something to that financial statement that you received, didn't you?

I am going to hand you what has been marked, but not admitted, Exhibit 4-G and Exhibit 4-H.

Would you tell the jury whether the original financial statement that you received by Mr. Barnett, dated March 28, 1970, was in that brown folder.

A Whether it is in here now?

Q No. Was it in there at the time you originally saw it and at the time it was originally presented to you?

A No.

Q All right.

In fact, the report prepared by Mr. Barnett was merely five pieces of paper clipped together, is that correct?

A That's my recollection. I'm not sure of the five. I would have to go and count them.

THE COURT: Mr. Rhodes, I think we will suspend now until 2:00 o'clock.

The jury may recess for lunch.

(The jury left the courtroom)

(Luncheon recess)

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Q Were they truthful?

A To the best of my recollection, yes.

MR. STOKAMER: Thank you very much.

No further questions.

THE COURT: Mr. Goldman?

MR. GOLDMAN: Thank you, your Honor.

CROSS EXAMIANTION

BY MR. GOLDMAN:

Q Dr. Chapel, my name is Lawrence Goldman. I am Mr. Ford's attorney.

Mr. Rhodes asked you a number of questions about the layout of the building that you went to for the March 26th meeting. Do you recall that?

A Yes, sir.

Q That was the building in which Mr. Ford had his office, is that correct?

A Yes

Q Do you recall how many offices there were in that building?

A As to a total number, no, sir.

Q Would you say there were more than four?

A If you count the reception area and the coffee area and the conference room, I'd say yes, there were four or more.

Q How many private offices can you recall, other than those general areas?

A The only room that I recall clearly is the conference room.

Q When you entered that, was there a reception room there?

A When I entered the office or the conference room?

Q When you entered the building.

A Yes, I seem to recall some sort of a reception area.

Q Was there a secretarial area there aos.

A To the best of my recollection, yes.

Q There also was a secretary there when you got in?

A Was there a secretary there? I don't recall whether there was one.

Q Do you recall if there was a typewriter in the desk for a secretary?

A Yes, I'm sure there was a typewriter.

Q Do you remember where you went from that reception-secretarial area, how you got to the conference room?

A As I recall, it was down a hallway.

Q Was that a hallway in the middle of the building, a central corridor?

A I have not a 100 per cent -- I have a reasonably clear recollection that there is a hallway and there are, or was, I assume the building still exists, doors on both sides.

Q But the would be off both sides of that central corridor?

A I'm not sure I went into all of them, but I suppose it is a safe assumption.

Q Do you recall how you left that building?

A How I left it?

Q Yes.

A No, I don't.

Q Do you remember whether it was the same way you went in?

A I really don't remember. That would be an assumption if I answered that, because I really don't recall.

Q Was that secretarial-reception area open, sir? Do you understand my question?

A I think I do, yes. My mental picture is somewhat hazy on it, but I would say, with that in mind, it seems to me as though it was open, yes, to some degree.

A 1180

jgs Chapel - cross

Q And was there access to that area from the central corridor?

A Yes, I recall.

Q Now, sir, you aid you recall Mr. Ford was at that board of directors meeting.

A Yes.

Q Do you recall whether he walked in and out a number of times?

A No.

Q Do you recall when he left that meeting?

A No, I don't recall.

Q Do you recall whether or not he left it before it terminated?

A Before it terminated?

Q Yeds.

A No, sir, I don't.

Q Let me ask you if you recall Mr. Ford excusing himself and saying he had to attend a play rehearsal.

A No. I really don't. There is just a very vague memory in my mind of something along that line, but it is not at all clear.

MR. GOLDMAN: No further questions.

Thank you, Doctor.

THE COURT: Mr. Krieger?

CROSS EXAMINATION

BY MR. KRIEGER:

Q Dr. Chapel, we've met already, haven't we?

A Yes, sir.

Q And we met really for the first time awt the lunch break, is that not correct?

A That's correct.

Q And we spoke for a few moments together, is that right?

A Yes, sir.

Q And, Dr. Chapel, we spoke about a couple of things, didn't we?

A Yes.

Q And you know that I do represent Selwyn Weber.

A Yes.

Q Now, Doctor, in regard to this meeting on or about March 26, 1970 at Mr. Ford's office, about which you've given testimony, I think on your direct examination you characterized it as a board meeting, is that correct?

A Yes, sir.

Q Now, it is a fact, is it not, Doctor, that as of, well, even now you cannot state of your own knowledge who the members of the board of directors of Select Enterprises were -- who the members were on March 26,

1970?

A That will be correct, yes.

Q And you don't know whether the meeting was attended by people who were not members of the board, is that correct?

A Myself would be the only one that -- as I recall my knowledge of who was what at that time, the only one I could be really sure of is myself.

Q And you were not.

A And I was not a board member.

Q Now, at th[illegible] you told us that there were people who really de[illegible]tations concerning certain business ventures, is

A Yes.

Q And whoever delivered a pre[illegible]s describing whatever composed or comprised t[illegible]ar business venture, is that correct?

A That's correct.

Q The assets as well as the liabilities.

A Yes.

Q And also presented what the prospects of the business venture was.

A As I recall, yes, that is right.

Q And it is also your recollection, is it not,

that you don't know who presented what?

A That's true. I don't recall who presented what.

Q That is correct.

A At one time I knew, I'm sure.

Q Well, we can only have your recollection now, and your recollection now is that you do not recall who presented what.

A That is correct.

Q Is it your recollection, as you testify here now, that you do not recall Selwyn Weber presenting anything?

A I do not ercall Selwyn Weber or anyone else that I recall having been there presenting a specific subject except, again, myself.

Q Do you have a recollection of Selwyn Weber presenting anything?

A No, I don't.

Q Now, is it your recollection as you sit here today that you can picture in your mind's eye Selwyn Weber at that meeting?

A As I sit here today, that's my recollection, yes.

Q Can you describe for us this room in which the

meeting took place?

A I have a picture of a relatively large room. I'm not sure that I could say how large. But I also have a picture of a conference table with a number of chairs around it.

Q People sitting in the chairs?

A People sitting in the chairs.

THE COURT: Let him answer the question before --

MR. KRIEGER: I thought he was through, your Honor.

A (Continuing) And that would be my recollection of that room.

Q And can you place in your mind's eye where you see Selwyn Weber in that room at that conference table, if at all?

A I'm afraid that I can't, because I'm not able, from my memory of the situation at this stage of the game, as to place anyone as to where they were sitting in particular.

Q And is it not a fact that you cannot recall identities of people who were there?

A That's true.

Q Can you tell us approximately how many people were there?

A Approximately eight or ten.

Q And certainly, of the eight or ten who were there, so far as your recollection can tell us, there were people who absolutely did not participate in thatmeeting except for their physical presence.

A I believe that, according to my recollection, would be a true statement.

Q Thank you.

Now, I would like to move ahead to approximately April 20, 1970. You do have a recollection of April 21, 1970, do you not?

A Yes.

Q That's the day on which you appeared before an SEC Examiner, correct?

A That's right.

Q And you told us in your direct testimony about a meeting that you had with Mr. Boyd and Mr. Weber the day before, is that correct?

A That's correct.

Q And was that at the Warren Hotel?

A No. That was at the Worth Hotel.

Q The Worth Hotel. And did you have an appointment to meet with either MR. Boyd or Mr. Weber on that occasion at that time?

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GOVERNMENT WITNESSES - Mrs. B. H. Grube

file?

A It is the handwriting of my husband.

Q I neglected to place in the stack, although I asked you in my question, Exhibit 3 for identification (handing)?

A Exhibit 3 is a letter written on the letterhead of Robert E. Ford, lawyer, Abilene. Texas, dated April 2nd, 1970, addressed to Mr. B. H. Grube, Ranch N, Elko, Nevada, and signed by Robert E. Ford, I assume.

Q Does it have attached to it some documents relating to Select Enterprises?

A Yes. This is a Xerox copy from W. Wayne Barnett, certified public accountant, Abilene, Texas, dated March 28, 1970, directed to the Board of Directors of Select Enterprises, Inc., Patio Building, Midland, Texas, and that's signed, I assume, by W. Wayne Barnett.

Q Finally, I would like to direct your attention to an envelope which is a portion of Government Exhibit 320. I ask you if that envelope bears any relationship to Exhibit 3, the letter from Mr. Ford?

A This is a letter with the printed Robert E. Ford, lawyer, Abilene, Texas, addressed to Mr. B. H. Grube, Ranch N, Elko, Nevada. The postmark appears to be April 2nd, 1970.

jbjw 5 Grube - cross

MR. GOLDMAN: Mr. Ford, your Honor.

CROSS EXAMINATION

BY MR. GOLDMAN:

Q Would you look at that exhibit, please madam, which is Government Exhibit 3.

Mrs. Grube, do you know Mr. Robert Ford?

A Yes, I do.

Q He has done some legal work for you, hasn't he?

A Not for me; for my husband.

Q And have you had an opportunity to receive letters from him or see letters from him concerning that work?

A I am sure there may have been. Most business was conducted in person.

Q If you look at that signature, you stated on direct examination that you assumed it was Mr. Ford's signature.

Do you know whether in fact it was his signature, madam?

A No, I do not.

Q Do you know also the address on that letter in the upper left-hand corner, 505 Mims Building?

Were you ever at Mr. Ford's offices?

A Yes, I have been.

Q Where is his office?

A I don't --

Q Do you remember whether --

A I don't remember. It's been --

Q Excuse me?

A I don't remember. It's been several years since I have been there.

Q Do you know whether it was in a converted bus station called the Ford Building?

A I believe it was called the Ford Building but I don't know anything other than that.

MR. GOLDMAN: Thank you.

CROSS EXAMINATION

BY MR. ROONEY:

Q Mrs. Grube, my name is Rooney and I represent the defendant Bissett.

A Mrs. Grube, you know, do you not, that on October 22, 1970, Mr. Grube was in Reno, Nevada?

A October 22, 1970?

Q No. Excuse me. January 22, 1970.

A I don't know except by going through checks and paying bills from the hotel at that time. They indicate he was there.

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(Pause)

Q Now, do you have some further recollection in respect of communication with Mr. Boyd on that subject?

A He told me, called me on the telephone in Lubbock and told me that he needed some names and some addresses of people that I knew and trusted to put stock in for stockholders list.

Q What did you do?

A And I in turn give him these names and addresses by telephone.

Q Would you tell us, please, the names -- it's not necessary to repeat the addresses, that you provided?

A Jack Geddes, Bruce Baker, Sam Hale, R.J. Darby, Sandra Darby, Ed Hunter, Roy Bell.

Q I would like to direct your attention to on or about March 5, 1970 and ask you if on that day you had occasion to travel to Abilene, Texas on some business in connection with Select Enterprises.

A Mr. Baker told me that he was about ready to make this trade with Mr. Stroud on them lake-lots, so I talked to Mr. Boyd and told him I was going to need some stock to make that trade.

He told me to go toMr. Ford's office in Abilene, Texas and pick up the Ed Goodloe stock and me and Baker travele to Mr. Ford's office in Abilene,Texas and picked up 60,000 shares of Select Enterprises stock.

Q From who?

A Mr. Ford.

Q Did you have occasion to sign any papers on the occasion of that delivery?

A I signed a receipt for the stock.

Q Look at Government Exhibit 339, please. Look from the fifth through the tenth pages inside that exhibit. Tell us if you are able to identify the copies that comprise that?

A Yes.

Q What is the entry at the upper right-hand corner?

A March 5, 1970.

Q Look at the page that follows that. Tell us if you recognize the signature on that page?

A Yes.

Q Did you sign that?

A Yes, I did.

Q Look at the next three pages and tell us if you recognize the matters that are photocopied there?

A Those are the stocks I picked up in Mr. Ford's office.

MR. MacDONALD: We offer the pages of 339 as identified.

THE COURT: We will call those pages 339-A.

MR. SEGAL: Does that consist --

THE COURT: Those are the two pages that have the witness' signature and three stock certificates following.

MR. SEGAL: I have five pages. The exhibit is split.

THE COURT: There are two pages that have the signature, the first two in your left hand. Then there are three stock certificates.

MR. MacDONALD: It would be helpful if the witness looked at the sixth page and see if he can identify that as well. Maybe that's what Mr. Segal has reference to.

Q Can you identify that?

A Yes, sir. That's the stock power that I got with the stock.

MR. MacDONALD: We ask that that be included in the pages offered, 339-A.

(Government's Exhibit 339-A was received in evidence.)

xx Q What did you do with the originals of those copies you have identified to the jury?

A I brought them back to Lubbock, Texas and, in

turn, sent Mr. Sam Hale to Reno, Nevada to have them transferred over to the Imperial National.

Q Did you have occasion to travel with Mr. Hale in that regard?

A I don't believe I did.

Q Did you receive a report thereafter Mr. Hale in regard to the trip to Reno?

A Yes.

Q What did he tell you?

A He told me he went out and got the stock transferred and brought it back.

Q Directing your attention to Monday, March 9, 1970, did you have occasion on the afternoon of that day to attend a meeting at the Worth Hotel and, if so, tell us who was present and what the conversation was on that afternoon?

A I met Mr. Boyd and Mr. Weber, and Mr. Chapel, Mr. Bickel at the Worth Hotel. Mr. Boyd had just got back from the SEC and him and Mr. Weber and Joe was telling me and Mr. Chapel and Mr. Bickel how things was going, and that he delivered the balance sheet to them and that he thought everything was going to be all right.

Q I direct your attention to Government Exhibit 2, at your left. I ask you to look at it and tell us if

jbas15 Joiner - cross

Q Right. And that stock was filled out to Ed Goodloe - Trustee, right? That was the name in which the stock was filled out.

If you would like to refresh your recollection, I believe it is in evidence, 339.

A I believe that is true.

Q But that is correct, is it not?

A Yes.

MR. STOKAMER: Thank you.

THE COURT: Mr. Goldman.

CROSS-EXAMINATION

BY MR. GOLDMAN:

THE COURT: Mr. Goldman represents Mr. Ford.

MR. GOLDMAN: Yes.

Q Mr. Joiner, you testified that at a meeting in Reno, you met Mr. Acton and Mr. Boyd. Do you recall that first meeting in Reno, sir?

A I met Mr. Acton, Mr. Boyd and Mr. Segal.

Q Yes. And Mr. Alan Segal.

A Yes.

Q Can you give us your best recollection of the date of that meeting?

A Somewhere around the 13th, I think, 14th, somewhere in there, I think.

jbas16 Joiner - cross

Q Of January?

A I think, yes.

Q And at that meeting, Mr. Boyd discussed various properties that had been acquired by Select, is that correct, sir?

A Yes.

Q And that included the mica mines?

A Yes.

Q And the oil and gas properties also?

A Yes.

Q And then again you had a further meeting in La Mesa.

Do you remember the date of that meeting?

A La Mesa?

Q La Mesa, yes.

A No, sir, I don't. It would be right after the date at the back on Mr. -- the first back proceeds come from Atoka. And I don't remember what the date was.

Q Would that be the end of January, the beginning of February, approximately?

A I would say yes.

Q And you also had a discussion of those properties.

A A short discussion, yes.

jbas-18 Joiner-cross

Q And you once discussed the possibility of an appeal of the case with him?

A Right.

Q Your case, is that correct?

A Right.

Q Do you recall when you received those documents, were they in an envelope?

A I don't believe they was because I had to sign my name right there.

Q Would you look at the top of the page of the first page of 339-A in evidence -- is that a receipt, sir?

A It says so, yes, sir.

Q And you signed that?

A Yes, sir.

Q And does it mention Mr. Ford's name on that document?

A I don't see Mr. Ford's name on it.

Q It indicates that you received it from Mr. Goodloe, is that correct?

A That is not correct.

Q Excuse me?

THE COURT: He says that is not correct.

THE WITNESS: That is not correct.

Q But that document indicates receipt from Mr. Goodloe, does it not?

A It indicates that there is a receipt for Mr. Goodloe.

Q Well, do you recall whether Mr. Goodloe had an office in that building?

A I didn't know Mr. Goodloe at all.

Q Sir, let me show you Government Exhibit 327 for identification, page 86, toward the bottom and I ask you to read from line 16 on that page --

MR. STOKAMER: Before the witness reads it, may I see it, please?

THE COURT: I don't think it is necessary to interrupt this cross examination for that. He has asked him to look at something.

A You want me to read through what?

Q To yourself, sir, on line 16 of that page, through line 22 of the following page.

THE COURT: You mean line 22, page 87?

MR. GOLDMAN: Yes, sir.

A I am done.

Q Does having read that refresh your recollection as to who physically gave you the stock, sir?

A No, it doesn't.

Q Now, sir, you have before you 339, attaching to 339A certain stock, is that correct?

A Yes, sir.

Q Do you see that?

A Yes, sir.

Q Can you tell us whether that is stamped with investment legend?

A This receipt?

pm4

pgs

Q You know the stock?

A Yes. It shows that.

Q Is it your understanding that that is "investment stock", as you described it to Mr. Segal?

A Yes.

Q What does that mean to you?

THE COURT: We went over that?

A Just as what I told Mr. Segal.

MR. GOLDMAN: No further questions.

MR. KRIEGER: I have no questions, your Honor.

CROSS EXAMINATION

BY MR. RICHMAN:

Q Mr. Joiner, my name is Bill Richman and I represent Emerson Titlow.

I am going to ask you to search back your memory five years --

THE COURT: Next question, please.

MR. RICHMAN: I am coming to it, Judge.

THE COURT: It does not require a travelogue or long initial statement. Please go on with your questioning.

MR. RICHMAN: I apologize to the Court.

Q You told us about going to Mr. Bissett's office one morning for a closing?

gsl6

was it?

A Yes. We had agreed on the price of $100 an acre for the Riverside property and, $50 an acre for the Imperial property with myself and Mrs. Vinson to receive a $20 payment back.

Q What if any were you going to give Davidson with respect to the property?

A I was to pay him part cash and the balance in Select Enterprises stock.

Q What were the per acre prices you were to pay him?

A The price agreed less $20 an acre.

Q Did there come a time thereafter when you attended a meeting in Abilene, Texas with respect to this land?

A Yes.

Q Can you tell us where it was, when it took place, who was there, and what happened?

A The meeting took place in Abilene, Texas February 17, 1970 in the office of Mr. Ford. I do not remember the first name.

Q Do you see Mr. Ford in the courtroom?

A I do not place him either.

Q Tell us who if anybody was present besides

yourself and Mr. Ford at that meeting and what happened?

A Mr. Goodloe, Mrs. Vinson, and Mr. Ford's secretary were there. At first we were ushered into what was the side door of the office, taken to a coffee room, and we discussed our business with Mr. Goodloe and waited for Mr. Ford to reach a point where he was not busy. We were discussing the property, and then Mr. Goodloe introduced Mrs. Vinson and myself to Mr. Ford.

Q When you say "We were discussing the property", who was the "we" and what was the discussion?

A Mr. Goodloe, Mrs. Vinson, and myself were discussing the merits and demerits of the property.

Q What was said on those subjects?

A The question of my title was raised, and I told them the kind of title that I had available for Mr. Davidson?

Q What did you say on that subject?

A That I had quitclaim deeds for Mr. Davidson available by his representation.

Q Was there any other conversation prior to the time Mr. Ford joined you?

A Rephrase the question.

Q As I understood you, this was you, Mr. Goodloe, and Mrs. Vinson in the offices of Mr. Ford?

A Yes.

Q There came a time when Mr. Ford joined you or you joined him; is that right?

A We joined him in his office and substantially covered the same ground with Mr. Ford bringing him to -- in other words, an up to date of my conversation with Mr. Goodloe.

Q Would you please tell us the substance then of the conversation with Mr. Ford beyond that which you have previously described, if there is anything beyond that which you have previously described?

A Substantially I believe I have described it all saying only that -- repeating again what I had a quitclaim deed, and the one other thing worth mentioning that I remember was that the question came up, could I absolutely clear title to the property, and I gave them my judgment that I had good clear title to the property.

Q Did you have occasions during the course of this meeting in Abilene to sign any documents?

A Yes, I did, sir.

Q Look at Government Exhibit 69 in the pile in front of you and see whether you can identify that?

A Yes, sir, I can.

Q What is that document?

A It is a contract of sale between Vinson & Vinson & Company, myself, and Select Enterprises.

Q I direct your attention to the third page of the document and the name Hoyt William Lendell Brinlee appears there. Is that your handwriting?

A Yes.

Q Under that is the name of Joan Vinson. Do you recognize that handwriting?

A Yes, I di.

Q Whose handwriting is it?

A It is Mrs. Vinson's signature.

Q Directing your attention to the following page, you will see that another name is written there. Without telling us what that name is, was that written there in your presence?

A Yes, it was.

Q Going on to the next page, which is the fifth page of the document, pages 5, 6, 7, and 8 of the document, the appraisal, can you tell us if that was attached to the document at the time you signed it?

A No, sir, it was Not.

Q What about the remainder, beginning with the ninth page and going on to the end of the document? What about those pages? Were they attached to it at the

time of the signing?

A You are referring to the assay report. Those were mailed at a later date to Mr. Ford. I do not believe I had them in my possession that day, but I did have them.

Q Who mailed them?

A To the best of my memory I believe Mrs. Vinson mailed them.

MR. SUSSMAN: The Government offers 69. That refers to the identifying testimony that was given by Mr. Davidson with respect to the five to eight pages.

(Government's Exhibit 69 was received in evidence.)

xx THE COURT: We will take a short recess at this time, ladies and gentlemen.

(Recess.)

BY MR. SUSSMAN:

Q Mr. Brinlee, before the recess we were talking about Exhibit 69 now in evidence and the meeting at which you signed that.

Did anything else happen at that meeting that you have not told us about?

A Could you have my last answer read to me, sir?

Q The last answer related to that document.

Do you remember now anything at that meeting that you haven't told us about? If you do not, we will go on to something else.

A No, I not at the moment.

Q Did there come a time after that meeting in Abolene when you again met Mr. Goodloe with respect to the California lands?

A Yes, sir, I did.

Q Would you tell us, please, when that was, where it was, who was there and what happened.

A Mr. Goodloe, Mrs. Vincent, and myself made a reservation at the airport for Mr. Goodloe and I to fly out to Los Angeles. We left the evening of the 20th of February 1970.

Q Go on.

A We flew into Los Angeles. The best I remember

We stayed at the Airport Marina, a hotel, that night.

We were met the next morning at breakfast by Mr. Davidson and a Mr. Grant Kime and a third gentleman whom I do not remember.

We were taken to an office where further discussion was made of the real estate, and then we were taken out to a small airport, or to an airport, and we got on a private plane, Mr. Grant Kime, Mr. Ed Goodloe, the pilot, and myself, and we flew over the land in Imperial and Riverside Counties.

Q Would you describe, please, for the jury what it is that you saw of this land when you flew over it?

A The land was rather large in land mass volume. A part of it was adjacent to a fertile valley. Most of it was arid, mountainous, scrub, sandy land. Just looked like it was good to hold the world together.

THE COURT: Who was on this trip?

THE WITNESS: Mr. Grant Kime, Mr. Ed Goodloe, the pilot, and myself.

Q What happened if anything after you got done flying around over the land?

A We came back to Los Angeles, went to the office, had some discussion and there met a Mr. Harvey and then Mr. Kime, Mr. Harvey, Mr. Davidson, Mr. Goodloe, and

myself went back to our motel and began to take steps to finalize our trades.

Q Did there come a time on that day --

By the way, what day is this we are talking about?

A February 21.

Q Did there come a time on that day when you had occasion to write out anything?

A Yes, sir, there did.

Q Would you tell his Honor, please, what it is that you wrote out?

A I wrote out an agreement, agreeing to pay a stipulated amount to Mr. Bill Davidson stating when he would get his downpayment of the stock, within thirty days, and the total purchase price less his commission back to ourselves.

Q Would you look at Goverment Exhibit 151, please, and tell us if you can identify that document.

A 151?

Q Let me see whether I can help you. These may have been mixed up.

I hand you Goverment Exhibit 151.

A Yes, sir, i can identify it.

Q Would you tell the jury, please, what it is.

A This is a document in my own handwriting that I wrote in the hotel there in Los Angeles on February 21.

Q What if any relationship does it bear to this transaction you have been describing?

A It is my agreement to pay for the land both by cash and stock, and it does not cover the whole transaction.

Q Did you have occasion to receive any document on that day, February 21, 1970?

A Yes, sir, I did.

Q Would you tell us, please, what document or documents you received?

A I received a Xerox copy of an original quitclaim deed signed by Ace Associates to Mr. Bill Davidson and Mr. Grant Kime to Vinson Investment Company and myself.

Q Would you look at Government Exhibits 138-A and 147-A and tell us if you can identify those documents.

A 138 and what was the other number?

Q 138-A and 147-A, sir.

A Yes, sir, I can.

Q Would you tell us, please, what they are?

A They are quitclaim deeds releasing various tracks

of land in Imperial and Riverside Counties, California, to W. L. Brinlee and Vinson Investment Company.

Q Are those the deeds you were just talking about?

A Yes, sir.

MR. SUSSMAN: They have previously been received, your Honor.

Q What if any other document was shown to you on that day and, if there was another document, who showed it to you?

A Mr. Bill Davidson showed me a deed from a Mr. Radtke as his reason for having title to the land. He stated we could get title insurance. He assured me this deed is his evidence of ownership.

Q Would you look at Exhibit 139. I believe it is in evidence. Tell us if you can identify that document.

A Yes, sir. This is the quitclaim deed shown to me by Mr. Davidson.

Q Now, does Government Exhibit 151, the handwritten agreement of yours, embody the entire understanding among the parties concerning the transactions in the California land agreed to on that date, the 21st of February?

A It does not cover the total transaction.

Q Would you please tell us what in addition to the

material contained in Exhibit 151 was agreed to that day.

MR. SEGAL: Objection, your Honor.

THE COURT: You are asking for the balance?

MR. SUSSMAN: The agreement beyond what is contained --

THE COURT: You are asking for the balance of the understanding?

MR. SUSSMAN: Yes, your Honor.

THE COURT: What is that, if anything?

THE WITNESS: The understanding was that $250,000 cash would be placed in escrow pending my final clearance of the title, and that of the $250,000 in cash $50,000 in cash would be forwarded in addition to the stock to Mr. Bill Davidson upon my completion of title clearance.

Q What if anything happened to the original deeds of which you testified you received a Xerox?

A To the best of my knowledge, Mr. Davidson -- or, let me say it this way -- Mr. Davidson told me he would keep them and release them upon receipt of the stock.

MR. SUSSMAN: May I ask the clerk to pass among the jurors Exhibits 151, 138-A, 147-A, and 139, if they have not previously been so passed.

Q Did there come a time, Mr. Brinlee, after this California meeting, February 21st, when you again met with Mr. Goodloe?

A Yes, I did.

Q Can you tell us when that meeting took place?

A I believe it was March 2nd in Abolene, Texas.

Q Would you tell us, please, where it took place, who was there, what happened at it?

A On March 2, Mrs. Vincent and I drove to Abolene and we left Mr. Goodloe at Mr. Ford's office. Along with Mr. Goodloe and Mr. Ford was a third gentleman whose name I do not remember.

We went into discussion of the finalizing of our contract of sale and at that time I was asked to deliver a warranty deed by Mr. Ford.

Q Was anything said with respect to the 50,000 shares referred to in Exhibit 151, the handwritten contract?

A I was told that the 50,000 shares were already ready. I did not see them, but they would be delivered to Mr. Davidson for his release of the original quitclaim deeds to back up the deed I was asked for.

Q What if anything was said or done with respect to the deeds of which you had gotten Xerox copies in

California?

A Would you ask your question again, sir?

MR. SUSSMAN: Would you read it to him, please.

(Record read)

A The best of my memory, they had obtained from Mr. Davidson on their assurances of his stock issuance, they had obtained the original quitclaim deeds and I believe showed them to me that day.

Q You mentioned something concerning grant deeds. Would you please tell us what, if anything, was said with respect to that subject.

A I was asked to sign a grant or a warranty deed and I repeatedly told Mr. Goodloe and Mr. Ford both that the only title I could warrant was the title I got from Mr. Davidson until such time as moneys were available to clear the titles and they asked, I forget whether one or both asked, that I go ahead and sign the warranty deeds and place them in escrow with Mr. Ford, as Mr. Goodloe personally assured me that Mr. Ford was a highly reputable and a very honorable attorney and that I could leave the deeds in escrow with him.

There was, to the best of my memory, no formal escrow agreement drawn.

Q Did you have occasion to sign any document at

this March 2 meeting in Abolene?

A Yes, sir. I had occasion to sign three documents.

Q Would you please tell us what the documents were that you signed.

A The first two documents were deeds for nine and eleven sections of land. Mr. Goodloe, on one of our trips to the coffee room, informed me that he could not in conscience take from the corporation, as he was an employee of the corporation, and since he felt his compensation to be inadequate and the amount of money and land changing hands, he felt that a token remembrance -- or at least his expression to me -- I don't know personally how he felt, but his expression to me was that "I am entitled to some remuneration and so is Mr. Ford for shepherding this transaction through the corporation."

Q Would you look at Goverment Exhibits 156 and 157 for identification and tell us if you can identify those two documents.

A Yes, sir. I can. 156 is a Xerox of a deed to Mr. Robert E. Ford, signed by Mrs. Vincent and myself for Section 25 and 36 in Riverside, California. Exhibit 157 is a deed for some nine sections of land, also in Riverside County, made to Mr. E. D. Goodloe.

Q Are those the two deeds to which you referred

a moment ago?

A Yes, they are.

MR. SUSSMAN: We offer them.

MR. GOLDMAN: Your Honor, I would like a voir dire on 156, please.

VOIR DIRE EXAMINATION

BY MR. GOLDMAN:

Q Sir, below the word "east" there are some figures and writing. Was that on it when you signed the deed, sir?

A I do not remember whether it was on there at that time or not, sir.

MR. GOLDMAN: I move to have that part redacted, your Honor.

MR. SUSSMAN: No objection.

MR. STOKAMER: May I see 157 before it goes in, your Honor?

(Pause)

MR. STOKAMER: May I proceed with a very short voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. STOKAMER:

Q Mr. Brinlee, would you look at the Exhibit 157?

Did you sign that deed at the meeting?

A Yes, sir, I did, I believe.

Q Did Mrs. Vincent sign it, as well?

A Yes.

Q On the bottom of the paper appear some pencil or pen written notations.

Do you see them?

A Yes, I do.

Q Do you know who wrote them?

A I do not know, sir.

Q Do you remember seeing them?

A Sir, I can't say that they were there; I do not know.

MR. STOKAMER: May I have that redacted, please, your Honor.

MR. SUSSMAN: We object to that. The remainder of the document includes information for the jury.

THE COURT: Was there any instruction that you recall that was given to the register of deeds in connection with tax statements and to whom to send them?

THE WITNESS: Sir, I don't recall.

THE COURT: Is it a common practice to leave an address in connection with a deed as to where a tax statement should go?

THE WITNESS: Yes, sir, it is.

THE COURT: And that information is given to the register so that the register will know to whom to send the tax statements?

THE WITNESS: Yes, sir.

THE COURT: Up above in the deed itself, in the typewritten portion, there was no address given for Mr. Goodloe, was there?

THE WITNESS: No, there was not.

THE COURT: Do you recognize the matter down at the bottom so far as the location is concerned of the man named there?

THE WITNESS: Yes, I recognize the name and his location, sir.

THE COURT: What do you recognize it as?

THE WITNESS: It was a mail address given to us to forward any mail we needed to forward him.

THE COURT: What was that mail address that was given to you?

THE WITNESS: It is Post Office Box 297 -- 2917, Abolene, Texas.

THE COURT: To whom was that addressed?

THE WITNESS: E. D. Goodloe.

MR. STOKAMER: May I ask a few more questions

after the Court is finished?

THE COURT: Yes.

BY MR. STOKAMER:

Q Mr. Brinlee, when was that address given to you?

A I believe he gave it to us on a card March 2, I think.

Q Do you remember?

A No, sir. I cannot say what day, sir.

Q If you were not to look at the deed which you are holding in your hand and at the address written down below, would you have any way of knowing the address?

A No, sir, I would not, to recall accurately. I would not except he did give us an address to mail things to him. Other than that, I would not.

MR. STOKAMER: Your Honor, I respectfully object and press my objection on the foundation.

MR. SUSSMAN: May I have a moment, your Honor?

THE COURT: Yes.

BY MR. SUSSMAN:

Q Mr. Brinlee, I show you what has been marked as Government Exhibit 158 for identification and I ask you if you can identify that document.

A Yes, I can.

Q What is it?

A It is a business card given to Mrs. Vincent while we were in Mr. Goodloe's presence. I believe it was given to us at the Heidelburg Coffee Shop in the Adolphus Hotel in Dallas.

MR. STOKAMER: May I see it, your Honor?

THE COURT: Yes.

MR. STOKAMER: I would like to inquire, your Honor. There is some printed matter on one side and there is handwriting --

THE COURT: Do you have any objections to the business card?

MR. STOKAMER: Yes. I have objection to the printed side on the front. There is some other writing on the back and I don't know whether it is being offered or not.

THE COURT: You say you do have objection?

MR. STOKAMER: Yes, on relevance grounds. I don't see any relevance to that card.

THE COURT: You don't see any relevance to the business card of Mr. Goodloe?

MR. STOKAMER: Not that one, your Honor.

THE COURT: I see.

The business card is received and so much of it as has to do with his business card and the address

and and post office box as shown there, Post Office Box 2917, Abolene, Texas, are received.

Exhibits 156 and 157 are received.

(Government Exhibits 156 and 157 received in evidence.)

THE COURT: The business card at this point has just been mentioned for the record and it will not be passed to the jury at this time.

Exhibit 156 will be redacted.

(Pause)

THE COURT: I have removed the penciled notations from my copy of Exhibit 156 and the clerk may use that copy and put the exhibit number on it and there was no question about 157 other than that address, was there, Mr. Stokamer?

MR. STOKAMER: Yes, sir.

Q Mr. Brinlee, still at that meeting March 2 in Abolene, did you have occasion to sign any other document in addition to 156 and 157?

A Yes, sir, I did.

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Q Would you please look at Exhibits 133 and 141 and tell us if you can identify those documents?

A Yes, sir. These are deeds to the Imperial and Riverside County lands that I signed on that day.

MR. SUSSMAN: We offer them.

(Government's Exhibits 133 and 141 were received in evidence.)

Q Did anything else happen at that meeting March 5th?

A I was, after having signed the deeds to Select Enterprise, again asked specifically for an appraisal, again stating that I did not have an appraisal and had not the financial means to get it, and I asked again to assure myself thaat the deed would absolutely be held in escrow and not used at all, and I was assured by both Mr. Goodloe and Mr. Ford that until payment was settled they would not be used.

Q Directing your attention to the week or so following that March 2nd meeting, did you have occasion during that week to have a telephone conversation with anyone with respect to shares of Select Enterprises?

A Yes, I did. I spoke with Mr. Bill Davidson.

Q Tell us, please, what that corporation was?

A The first conversation we had, he wanted to

A I don't know.

Q I believe that you testified, and I am not clear on this and I want to know what you have said -- my notes may be inaccurate -- did you receive $20 per acre plus stock for both the Riverside and the Imperial properties?

Was that your arrangement with Ace?

A I believe that the agreed amount of the $20 included both cash and stock divided, sir.

Q My question is, did that arrangement that you had with Ace relate to both the Riverside property and the Imperial property?

A Oh, yes.

Q Are you sure of that?

A Yes, sir.

Q You had represented in your conversations with either Mr. Goodloe or Mr. Ford or both that you could convey good title, did you not?

A I believe I did.

Q That was contingent only on the fulfilling of certain conditions relating to stock and money, is that correct?

A That is correct, sir.

Q So that you actually represented at all times

that as long as the cash and the stock came in, that there was no problem about title to that land; isn't that correct?

A That was my opinion, sir.

Q And it is still your opinion?

A It was my opinion at the time, sir.

Q When you made that representation, you never indicated that there was any title problem, did you?

MR. STOKAMER: Objection, your Honor.

A Yes, I did.

Q What kind of a title problem did you indicate at that time?

A I told Mr. Goodloe and Mr. Ford both about the title problem only being a quitclaim deed and some question of ownership.

Q You had a quitclaim deed, did you not, because you were not given full title because Ace didn't trust you? Isn't that right?

A No, sir, it is not right.

Q Did you have any reason to believe that Ace did not have a warranty title to that entire property?

A They told me they didn't have a warranty title.

Q Did they tell you they had a title that covered that property entirely?

Q Start with March 2nd. Was there anybody else you dealt with who in your mind was representing Select from January up until March 2nd?

A I understood Mr. Ford was.

Q Had you dealt with him?

A Yes. I would call it dealing with him. I am trying to remember what the name would be -- it is a sale agreement.

Q When was that?

A February 17, 1970.

Q In addition to Mr. Ford, had you negotiated with anybody else on behalf of Select?

A Not that I recall. There was some gentleman, and what his position was I do not recall --

Q There was a gentleman where?

A At the February 17th and the March 2nd meetings, and I do not recall who he was.

Q When you had to contact Mr. Goodloe, how did you contact him?

A Usually by phone.

Q Where was it that you called him? Do you recall?

A Most of the time I left word for him and Mr. Ken Hester's.

Q Did you ever have occasion up until March 2nd to write to Mr. Goodloe?

A I do not remember.

Q Did you telegraph?

A I don't remember everything I did.

Q Do you remember whether or not you did it?

A I don't recall it, sir.

Q Do you remember whether or not you ever wrote to him after March 2nd?

A Oh, yes. I wrote to him after March 2nd.

Q When you wrote to him after March 2nd, did that refer to, pertaining to, the sale of the California land?

A The only one I recall now is a letter written June 2nd.

Q Did you ever write to Select Enterprises after March 2nd?

A Sir, I don't recall. I don't remember it.

Q On June 2nd you say you wrote to Mr. Goodloe?

A Yes, I did, sir.

Q Do you have a copy of that letter with you?

A I believe I have the original.

Q May I see it, please?

A (Handing.)

Q You testified about this letter, did you not?

A I believe I did, sir.

Q The transfer of March 2nd was a contemplated sale, was it not, or a trade?

A Yes. It was to be completed.

Q It was to be for 161 parcels, was it not?

A I do not remember the exact amount. It was a massive amount of land, sir.

Q Was it suppose to be for 150 parcels?

A Sir, I cannot recall the number. It was for a large transaction.

Q Prior to March 2nd were you ever informed that Mr. Goodloe was a large shareholder in Select Corporation?

A What do you mean by "large shareholder"

Q That he had a sizable percentage of the outstanding stock?

A I don't recall being given an estimate of the size of his stockholdings.

Q You received approximately 750,000 shares of Select in return for 150 parcels of that California land, did you not?

A No, sir, I did not.

Q On the day that you executed the deed -- you did execute a deed for 150 parcels to Select, did you not?

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A I don't recall the number. I did execute a deed.

Q You executed two deeds, did you not?

A I believe four.

Q Did you execute two deeds --

THE COURT: He says four. You are telling him two.

MR. STOKAMER: I am asking another question, your Honor.

I will rephrase it.

Q How many deeds did you execute on March 2nd?

A Four, I believe, sif.

Q Who were they to?

A One to Mr. Goodloe, one to Mr. Ford, and two to Select Enterprises.

Q The two that went to Select Enterprises were in return for 750,000 shares of stock? If you need something to refresh your recollection please indicate that.

A Are you asking me were they exchanfor that?

Q Yes.

A No, sir, they were not. There was a promise made but no stock every changed hands on the real estate.

(The witness spoke to the Court.)

THE COURT: You may supplement your answer, if

you wish.

THE WITNESS: May I supplement my answer to you, sir?

I made a blanket statement. I said no stock ever changed hands. No stock was given to me for any deeds on this land.

Q Was the deel for 750,000 shares of stock?

A If completed, yes. It was to have been.

Q There was another and separate deal which consisted of getting 60,000 shares of Select stock from Mr. Goodloe in return for your 11 pieces of that California land?

A No, sir, there was not. There was no consideration whatsoever for those 11 sections.

Q Do you remember being asked at the Securities and Exchange proceeding these questions and giving these answers on page 25, line 17?

"Q Certificate No. 1857 --"

That's the same certificate that was shown to you in court?

A Yes, sir.

Q (Reading;)

" -- for 10,000 shares dated February 26, 1970, now this is in the name of Edward Goodloe,

trustee. How did you acquire the 30,000 shares?

"A For 11 sections of land I was given 60,000 shares of stock, 30 of which went to Mr. Davidson."

Do you remember that question?

A Yes.

Q Do you remember that answer?

A Yes, I do.

Q Did you give that answer?

A I gave that answer. It was not correct.

Q You were lying then?

A Yes, sir. I regret and blush to say that I was, sir.

Q Why were you lying?

A Mr. Ed Goodloe personally asked me to do so and he would the papers to that effect and he never made them.

Q You were doing it as a favor to a stranger?

A He was not a stranger. I considered him a friend.

Q You considered him a friend and yet you cannot identify him in this courtroom today?

A Sir, when you have not seen someone for five years you might not be able to recognize him. I did not wish to point out the wrong man. I did not recognize him.

separate transaction with Mr. Goodloe?

A I considered it a separate transaction.

MR. STOKAMER: Thank you. I have no further questions.

THE COURT: Mr. Goldman.

CROSS EXAMINATION

BY MR. GOLDMAN:

Q Mr. Brinlee, before you you have the deeds which have been marked 138-A and 137, sir?

A No, sir, I don't believe I have.

(Pause.)

Q Sir, those two documents are quitclaim deeds for California land from Ace Associates to you and Mrs. Vinson, is that correct?

A Yes, I believe they are.

Q Were those acknowledged or notarized in your presence, sir?

A No, sir, I don't believe they were.

Q Excuse me? I am sorry. I didn't hear you.

A I don't believe they were.

Q Were they acknowledged and notarized before they were given to you?

A Yes, they were.

Q Do you recall on March 2 in Mr. Ford's office

having any discussion about the acknowledgment of those deeds?

A No.

Q Did Mr. Ford mention that there should have been a corporate acknowledgment, rather than an individual acknowledgment?

A I don't recall it, sir.

Q Did you, by the way, record those deeds?

A No, sir, I did not.

Q Did anyone on your behalf?

A I don't know who recorded them or if they were recorded.

Q Did Mr. Ford tell you that they would have to have these deeds reacknowledged?

A I do not recall, sir.

Q By the way, that March 2 meeting was at the building which Mr. Ford has his office in, is that correct?

A Yes, I believe so.

Q And you had been there once before on the 17th of February?

A Yes, sir.

Q Did Mr. Goodloe have an office there, sir?

A I couldn't tell you.

Q Were there a number of offices in that building?

A Yes, sir. I was in either two or three.

Q By the way, you said you had a conversation with Mr. Goodloe on March 2 on the way into the coffee room, is that correct?

A In the coffee room, sir.

Q That's the conversation in which he mentioned that he wanted you to give him 11 sections of land, is that correct?

A Some land, yes.

Q Was Mr. Ford present at that conversation?

A When it was initiated, I don't believe he was, sir.

Q At Mr. Ford's insistence, you drew up a warranty deed, is that correct?

A Yes, sir.

Q You had some argument over that, is that fair to say?

A We had some discussion, yes, sir.

Q Would you say you didn't want to draw up a warranty deed? Is that correct?

A That is correct.

Q And he insisted on it?

A Yes, sir.

Q That meant in fact that you guaranteed that yc

had good and valid title to that land, did it not?

A No, sir. Mr. Ford and Mr. Goodloe both were told I would not warrant a title I received until such time as bonds were forthcoming to clear title to it.

Q You said you gave them an absolute -- I believe your testimony was that you stated absolutely that you could give title to that land; is that correct?

A At the time I discussed title to this land with Mr. Ford or Mr. Goodloe or anyone else, I stated title could be cleared to it, sir, subject to money and so forth.

Q You used the term "absolutely", did you not, in your direct testimony?

A I don't know that I used that specific word. My memory is not that perfect, sir.

Q But would you say that you said absolutely that it could be cleared subject to money and so on?

A I don't know that I used the word "absolutely". I believe I stated that I thought I could clear it but I don't know word for word. Someone would have to read it back to me.

Q Isn't it true, sir, that that stock was not to be given to you until the land in fact had been cleared up and title guaranteed?

A That is correct.

Q And that stock was being held in escrow until the land --

A Sir, I never saw the stock and I don't know that it ever went into escrow.

Q The stock was not supposed to be given to you until there was --

A It was not supposed to be given to me until the transaction was completed. The money was to be placed in escrow so I knew it was there and could not be passed to me until the titles for the property were cleared; neither the money nor the stock.

Q Now there was no --

A Likewise, the deeds were not to Select enterprises until I was paid and titles likewise cleared.

Q Wasn't it true, sir, that that title that was supposed to be given to Select was title in Select Enterprises?

A What do you mean by title in Select Enterprises, sir?

Q Well, sir, those deeds, in order for a title policy to be secured, those deeds have to be recorded, do they not?

A Yes, sir. They had to be recorded.

Q Therefore, they could not have been kept in escrow somewhere but had to be --

A They certainly could, pending a closing, sir, in any real estate transaction I ever had.

Q But you were supposed to give title guarantee, is that correct, before you got that stock?

A After the stock and money were placed in escrow, I was to give title guarantee.

Q And you never did that, did you, sir?

A No, sir. They never showed any evidence of having established their stock and money in escrow. Therefore, I was powerless to try to give a completed title.

Q Now, sir, you said You had no written escrow agreement, is that correct?

A To the best of my memory. I didn't have one.

Q Do you recall whether you had any agreement at all, any written agreement concerning the delivery of those deeds?

A I don't know, except this one made March 17. That's the only one I remember.

Q Which one is that, sir? What exhibit?

A Sir, that's Exhibit 16.

Q That is February 17, is it not?

A It is February 17.

Q Let me show you Defendant Ford's Exhibit A for identification and ask you if you recognize the signatures at the bottom of that.

A Yes.

Q Is that your signature, sir?

A Yes, sir, it is.

Q Is that Mrs. Vinsons signature?

A I believe it to be, sir.

Q You signed that letter?

A I signed it but that doesn't cover the whole transaction.

Q This was signed by Mrs. Vinson and by you, sir?

A I told you it did not cover the whole transaction.

Q I asked you, was it signed by you and signed by Mrs. Vinson?

A I answered it, yes, sir.

Q Is that your initials and Mrs. Vinson's down at the bottom?

A My initials. I didn't read hers.

Q Would you look at it, sir?

A Yes, it is.

Q Was that signed on March 2 in Mr. Ford's office?

A I guess it was. I didn't notice the date, sir.

Q Excuse me?

A I did not read the date.

Q It's dated March 2, is it not, sir?

A If that's the record, yes.

MR. GOLDMAN: I offer it into evidence.

MR. SUSSMAN: No objection.

THE COURT: How about the other parties to the suit? Have they seen it and do they have any objections?

MR. GOLDMAN: May I pass the copies to them?

(Pause.)

THE COURT: Received without objection.

(Defendant Ford's Exhibit A was received in evidence.)

MR. GOLDMAN: Your Honor, may I read from the second paragraph of that document?

THE COURT: You can read anything you want, if you do it quickly.

(Mr. Goldman read to the jury from Defendant Ford's Exhibit A in evidence.)

Q Is that the document you signed, sir?

A Yes, except the document has one misstatement

in it.

Q Did you read that over before you signed it?

A Certainly did.

Q You said, when you were asked if you could recognize Mr. Goodloe and Ford on direct examination, you could not, is that correct?

A I could not and I still could not recognize Mr. Ford.

Q And you said with respect to Mr. Goodloe that was because five years was a long time to remember; is that correct?

A That is correct.

Q Can you say that your recollection as to the details you have given is any better than your recollection as to faces?

A Sir, I have answered to the best of my knowledge and remembrance. That's all I can do.

Q Now, sir, in your letter, Government's Exhibit 159, your letter to Mr. Goodloe on June 2, 1970, you said that you could now clear title. Is that correct?

A Yes.

Q Can you tell us what you had done to clear title by that time?

A I didn't say I had cleared the title, sir.

I said I could then clear title.

Q That's as of June 2?

A Yes, sir.

MR.GOLDMAN: No further questions.

THE COURT: Mr. Krieger?

MR. KRIEGER: No questions.

THE COURT: Mr. Richman?

MR. RICHMAN: No questions.

THE COURT: Mr. Ehrlich?

MR. EHRLICH: No questions.

THE COURT: Mr. Lesser?

MR. LESSER: No questions.

THE COURT: Mr. Rhodes?

MR. RHODES: Yes, your Honor.

CROSS EXAMINATION

BY MR. RHODES:

Q Mr. Brinlee, you testified before the Securities and Exchange Commission under oath on April 27, 1970, did you not?

A Yes, sir, I did.

Q I want to ask you if you were asked this question and if you gave this reply at page 48, line 9:

"Q In your opinion, does Select own the land in Riverside and Imperial County, California?"

***

pags6 GOVERNMENT WITNESSES - Roy B. Goodloe

(Witness excused)

- - -

R O Y B. G O O D L O E, called as a witness on behalf of the government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. Goodloe, tell the jury, please, your age, address, and your current occupation.

A Fifty-eight. I live in Lubbock, Texas and I am in the trucking business.

Q How long have you been in that business?

A About ten years.

Q Are you the brother of E. D. Goodloe whom you see here in court today?

A Yes.

Q Do you know any other persons whom you see here in court on a social basis?

A Yes.

Q Would you tell the jury which other such persons you know socially.

MR. SEGAL: Objection. Relevancy.

THE COURT: Overruled.

You may name them.

THE WITNESS: The people I personally know?

THE COURT: Yes.

A There is Bob Ford, Joe Boyd, and my brother Ed Goodloe, and that's all.

Q Look at the document on top there, Government Exhibit 9 in evidence. I ask you to examine please the top page, the writing that appears copied on the bottom of that page. Tell us if you recognize your signature.

A No, sir.

Q The words "Parker Goodloe" appears on that page?

A Yes.

Q Do you sign your name in that fashion?

A Yes.

Q But is that particular signature one which you signed to the original of that document?

A No.

Q Look please at page 5. Tell us if you recognize the handwritten Parker Goodloe on that page.

A No.

Q Turn to pages 13 and 14, the next pages on which the handwriting such as that appears. Do you see another handwritten Parker Goodloe?

A Yes.

THE COURT: It will remain marked for identification for the present.

Q I would like to direct your attention to on or about March 26, 1970 and ask you on that day did you have occasion to travel to Abilene, Texas to attend a meeting concerning activities of Select Enterprises?

A Yes.

Q Tell us, first of all, who you recall also attended that meeting, and then tell us what it was that you remember about the meeting.

A Of course there were a number of people I didn't recognize, that I didn't know. I was introduced to them. I don't remember who they were, all of them.

Mr. Boyd was there. Mr. Knisely was there. Selwyn Weber was there. Mr. Ford was there -- who I believe that's the first time I ever met. Dr. Hanson, I think, from Big Springs was there -- that's the first time I ever met him. There were two or three others. I don't recall their names.

I can't think who else, if there was any other person there.

Q Can you tell the jury what you recall discussing on that occasion with those men, what happened.

A Well, they called the meeting. They were trying

to evaluate -- I assume what they were trying to do -- was to evaluate the various properties that they were trading for and did a lot of waiting for, I believe, a secretary to show up to write up the minutes. Then they was waiting for quite a while, quite a time, for their man, whom I didn't know and I don't think I ever met, that was going to write up the evaluations.

Q Where was that individual if he was not in the room?

A Well, I assume that he was in the building somewhere --

MR. RHODES: Objection, your Honor.

THE COURT: You can't "assume."

Did you know or did anybody tell you?

THE WITNESS: Well, I believe they told me that a Mr. Barnett -- I don't think he was present at the early part of the meeting -- I think he came a little later for some reason or other.

Q Directing your attention to the specific subjects that were being discussed in support of the evaluation, do you have a recollection of the California land being discussed at all?

A I have a recollection of the land being talked about.

pgas4 Maxson - direct

Q Tell us what you remember in that regard.

A Well, it had terrific value.

MR. SEGAL: Your Honor, if Mr. Maxson can identify the speaker --

THE COURT: Do the best you can. Tell us what you recall each one said, identifying who was doing the talking.

A (Continuing) Mr. Boyd was in charge of the meeting, and I can't recall what was said. There were a lot of conversations around there.

Q On the California land subject, do you have any memories concerning that topic or any discussion of it?

A That was supposed to be very valuable. They claimed it had good sweet water under it and lots of it, good irrigation property, that it would make the rest of the valley look sick.

Mr. Boyd at one time had asked me if I would go out and examine the property. I never did. I have, of course, no idea what the property is worth. I understood later that it was salt water.

MR. SEGAL: Objection.

THE COURT: Strike out what you learned later.

Q Do you have a recollection of oil and gas leases being discussed?

pgas5 Maxson - direct

A Yes. There was oil and gas leases that were discussed and, I believe, that at the time the wells that were on this property were small wells and there was some discussion about what the value would be if the properties were properly handled, worked over, and they would produce a considerable amount of income; but I don't recollect what value they had on them.

Q Do you have a recollection of the mica deposits in New Mexico being discussed?

A Yes. It was discussed. I think at that time they claimed they were moving a considerable amount of ore and that they would soon have it in a very good productive manner, and that it would be a very rich operation. I don't know what the value of it was. I didn't hear it discussed.

Q I would like to direct your attention now to on or about April 15, 1970 and ask you if on that day you had occasion to be with Dr. Knisely in your offices, and did you have a discussion with him concerning a request that he go to Fort Worth and appear before the Securities and Exchange Commission and, if so, tell us what you recall of that discussion, sir.

A Well, Dr. Knisely called me, said that he had received some papers. He didn't know what they meant,

is the person who owns the oil and gas lease and intends to develop and/or drill in the wells on that property.

Q Did your conversation on that occasion include any discussion of financing the $37,500 purchase price?

A Yes. Mr. Goodloe stated that he had made arrangements with a bank in Abilene to fully fund this purchase price and that the participation of myself and my brother and himself would be to sign the notes borrowing the money from the bank in Abilene.

Q What happened in respect of this matter next?

A In October 1969, thereabouts, I visited in Abilene and with Mr. Goodloe and Mr. Bob Ford and Mr. Robert Ford is an attorney in Abilene, Texas.

The meeting was in Mr. Ford's office. The meeting was at Mr. Ford's personal desk.

Q How long did it last?

A This meeting lasted, overall, about three hours or so and the initial two hours or so, Mr. Goodloe and Mr. Ford and I discussed the merits of the oil and gas venture and, when I say that, I am talking about detailed information.

Mr. Goodloe had a report on this particular area and this report explained some historical information

on wells that had been drilled in the area.

In addition to that, we discussed the partnership arrangement of Mr. Goodloe taking a 50 per cent interest and my brother and I taking a 50 per cent interest.

From our standpoint, there were two things that certainly needed to be cleared in our minds. One is the legal title to the property and the second is our assignments of ownership after the title had been determined, that it is legal.

Mr. Robert Ford, the attorney, and I discussed this matter and Mr. Ford stated to me that he was familiar with the title in this property and that he would certainly see that my brother and I were protected and would get our assignments on these oil and gas leases and, based on our participation in the project.

Q Do you see Mr. Ford here in court today?

A Yes. Mr. Ford is sitting right here with the blue tie, white shirt, brown suit.

Q I would like to direct your attention, Mr. Peterson, to Government's Exhibit 163 before you and ask you if you will examine that and tell the jury if you can identify it for them?

A This exhibit is a copy of the report that

Mr. Goodloe and Mr. Ford and I discussed in Mr. Ford's office in Abilene on the occasion just mentioned.

The report is signed by Mr. Joseph Brown and, at this particular meeting with Mr. Ford and Mr. Goodloe, I did ask for additional detailed information and Mr. Brown was called and did bring in additional information that I had requested.

Mr. Brown met with us and discussed this project with us efor an hour to an hour and a half or so.

Mr. Brown stated that he was very familiar with the area, he had followed it for a number of years --

MR. SEGAL: Objection.

THE COURT: Strike that out, what Mr. Brown stated.

MR. MacDONALD: Your Honor, I am uncertain whether I can represent to the Court about the inclusion in the supplemental bill but we would, at least, offer it as to the parties in attendance at the meeting.

THE COURT: Go ahead with your questioning.

Q Mr. Peterson, limit yourself to telling us what if anything was said in the presence of Mr. Goodloe and Mr. Ford by Mr. Brown and yourself as you discussed the further detailed information you were referring to.

A In the course of conversation between Mr. Brown, Mr. Ford, Mr. Goodloe and I, Mr. Brown stated that he had an overriding interest under these leases and under the Rhodes-Hudaleston wells, and it would be to his benefit to get additional development on these tracts.

Q Have you completed your answer?

A Yes.

MR. MAC DONALD: We offer Government Exhibit 163.

MR. STOKAMER: On my copy there are handwritten notations on various pages. I ask that they be redacted: the third and fourth pages, the right-hand margin.

THE COURT: Do you see that handwriting on the third and fourth pages?

THE WITNESS: Yes.

THE COURT: Who did that?

THE WITNESS: I do not know.

THE COURT: The exhibit is to be redacted with that out.

MR. STOKAMER: Also the sixth page shows something similar, but it is difficult to read; a similar situation

A Yes.

In January, February or March of 1970 Mr. Goodloe visited Dallas on sporadic occasions and visited with myself and my brother and told us about the Rhodes-Hudaleston well that we were attempting to rework, and during this interim we had paid some bills on this particular well for people who performed work only and, of course, we were interested in how this well was performing. We were also interested in getting our assignments which would establish our legal ownership to the title of these properties.

Mr. Goodloe stated to us that Mr. Ford, the attorney, was working on the assignments and that they would come to us in due time.

Q Directing your attention to the next three months of 1970, that is March through June, did you have occasion during that quarter to have some additional conversation with anyone with respect to this matter?

A As of the latter part of March, April, 1970, or the early part of April, I talked with Mr. Bob Ford by telephone in Abilene asking, one, "Where is Mr. Goodloe? We have not been able to find him. He has offices in your office. Can you tell us of his whereabouts?"

In addition, we inquired of Mr. Ford about our legal assignments to this --

MR. GOLDMAN: Objection to "we," your Honor.

THE COURT: You can clarify it on cross-examination.

MR. GOLDMAN: I wanted to make sure it is not hearsay as to what someone told him.

THE COURT: "We" means himself.

MR. GOLDMAN: I think he said "we inquired."

THE COURT: Use the personal pronoun when you refer to yourself and use the impersonal when you refer to somebody else.

THE WITNESS: Yes, your Honor.

I asked Mr. Ford about our legal assignments and he, Mr. Ford, stated to me that the assignments were in the possession of Mr. Goodloe; that they were forthcoming and that we had nothing to worry about as far as our interest was concerned in these leases.

Q Throughout both of those conversations you have described, the earlier ones were with Mr. Goodloe and the later ones with Mr. Ford, were any references made to Select Enterprises?

A No.

Q Directing your attention to on or about

December of 1970, did you have occasion to go somewhere?

A Yes. I visited the Comanche County Courthouse in Comanche, Texas and went through the oil and gas deed records to check those records myself to see if any assignments had been made to Mr. Goodloe and to see if any assignments had been made to the Petersons that were involved in this case. I did find --

Q Look at the documents before you, refer by exhibit numbers, and tell the jury if you can identify those exhibits.

A Exhibit 161 I found on record. It is an assignment of oil and gas leases from Mr. Rhodes to Mr. Goodloe.

Q How about 162?

A The notary public on this particular document is Robert E. Ford.

Q Exhibit 162.

A I found in Comanche County an assignment of oil and gas leases from E. D. Goodloe to Select Enterprises, Inc.

Exhibit 168 I found in Comanche County. This is an assignment of oil and gas leases from Mr. Joseph L. Brcwn and R. Elliot Bryant to Mr. L. G. Rhodes.

Exhibit 167 I found in Comanche County was an

assignment of oil and gas leases to Mr. Joseph L. Brown and R. Elliot Bryant to L. G. Rhodes.

Exhibit 166 is an assignment of oil and gas lease which is actually an overriding royalty interest declaration stating that R. Elliot Bryant, O. L. Burns, and Joseph L. Brown have overriding royalty interests under these leases that are assigned to L. G. Rhodes.

Exhibit 169, I found in Comanche County, is an overriding royalty assignment from E. D. Goodloe to Lloyd London. The notary public is Robert E. Ford on this document.

MR. MAC DONALD: We offer each of the exhibits so identified.

(Government Exhibits 161, 162, 166, 167, 168, and 169 received in evidence.)

Q Did you go somewhere after leaving the courthouse that day?

A Yes. After leaving the Comanche Courthouse I drove to the well site for the Rhodes No. 1 Hudaleston well which was the well that was recited in our partnership arrangement with Mr. Goodloe. I found the remains of the well. All that was remaining at that time was some casing or pipe in the surface of the ground and that pipe had been filled with cement.

That well had been plugged and it had been abandoned, and all the equipment had been removed from the well site.

Q Directing your attention to March of 1972, did you have occasion in that month to attend a deposition in Mr. Robert Ford's office in the course of a civil lawsuit between the First Bank of Atoka and you and your brother?

A Yes.

Q In the course of that day were several depositions taken?

A Yes.

Q Did one of those depositions include Mr. Ford's own deposition?

A That's correct.

Q I would like you to look at Exhibit 176 before you. I ask you if that is a copy of the transcript of the Ford deposition taken on that occasion.

A Yes. This appears to be a copy of the deposition that was taken in Abilene.

MR. MAC DONALD: It is stipulated that Gerald Owens, a court reporter, if called as a witness, would testify that he caused to be prepared Government Exhibit 17 from his stenographic notes on and after the 14th day of March 1972, and thereafter the original stenographic

notes were destroyed following completion of the transcript.

Subject to that stipulation we offer the transcript in its entirety.

(At 10:45 a.m. Mr. Krieger entered the courtroom.)

MR. STOKAMER: I object, your Honor. I object on relevancy and on prejudice.

MR. GOLDMAN: I object on relevancy and certainly I object to the entire exhibit.

THE COURT: I have to read it?

MR. MAC DONALD: At this time I would like to ask a question about a portion of it and I direct counsel and Mr. Peterson's attention to page 31.

MR. SEGAL: Objection, your Honor.

THE COURT: He is directing your attention to something. He is not doing anything. Don't you want your attention directed? I thought that was what you were objecting to. He said he wants you to look at page 31.

MR. MAC DONALD: Beginning at line 10.

Q Was the question beginning at line 10 and down through --

MR. GOLDMAN: Your Honor, I am going to object to this.

MR. SEGAL: Objection.

MR. STOKAMER: Objection.

THE COURT: You'd better let me see it.

(Pause)

THE COURT: Please proceed.

Q Was that question true and was that answer given by Mr. Ford on that occasion?

MR. SEGAL: There is an objection at that point, your Honor.

THE COURT: Were you present on that occasion that is spoken of?

THE WITNESS: Yes, sir.

THE COURT: Did you hear what was being asked and what was being answered?

THE WITNESS: Yes, sir.

THE COURT: Did you hear the questions that were put at lines 10, 17 and 20? Yes or no.

THE WITNESS: Yes, sir.

THE COURT: Did you hear the answers that were given to those three questions?

THE WITNESS: Yes, sir.

THE COURT: Are the answers on the questions set forth at lines 8 through 21?

MR. SEGAL: I would object to that.

THE COURT: Overruled.

THE WITNESS: Yes, sir.

MR. SEGAL: If I may, your Honor --

THE COURT: Send up a note. I will take your note.

(Pause)

THE COURT: I will ask that this be marked a court exhibit.

(Court Exhibit 19 marked.)

THE COURT: Court Exhibit 19 is a memorandum from Mr. Segal. In that connection:

Do you recall precisely what the question was and what the answer was, without looking at the transcript again? Can you recite it from memory?

THE WITNESS: I can't recite it word for word.

THE COURT: You cannot?

THE WITNESS: No.

THE COURT: Does examination of those questions and those answers recall to you that that is what you heard at that time?

THE WITNESS: Yes, sir.

THE COURT: Would you require the transcript itself to give the exact words that you heard at that time?

THE WITNESS: No, sir.

THE COURT: You don't need --

THE WITNESS: I would not require the transcript. I would rely on this information in this transcript.

THE COURT: You would need the transcript if you rely on it. Isn't that what you are saying to me? I am asking you, can you recite from memory now without looking at the transcript what the exact words were on that occasion? Can you recite it from memory?

THE WITNESS: No, sir.

THE COURT: You need the transcript in order to enable you to give the exact words?

THE WITNESS: I would have to read the transcript in order to add the exact words.

THE COURT: The objection of Mr. Segal is accordingly overruled.

I will ask that this be marked as the next court exhibit.

*** (Court Exhibit 20 marked.)

THE COURT: This is a note from Mr. Rhodes. That raises the question that has run through the entire course of the trial and depends upon the proof of count 1, and, accordingly, the limitations suggested here would be those that would be again reiterated in the instructions to the jury, that proof of the essential

elements of count 1 has to be established in order to permit any of this to apply to anyone other than the declarant, and the objection, therefore, is moot at this point in the sense that we have reserved that subject to connection objection throughout the trial.

You may, therefore, Mr. Witness, read the question that you heard and the answer that you heard given on that occasion.

Q Mr. Peterson, do you have the line?

THE COURT: Line 10.

A "Q When had you seen those, sir?

"A I wrote a title opinion for Select Enterprises some time in March, I believe, and I had before me the title opinion by another attorney and I also had that document and I some other supporting affidavits and opinions in which I wrote the opinion saying that Select Enterprises had title to the leasehold estates."

Q Continue through to line 21.

MR. RHODES: Your Honor, may I give you a note?

THE COURT: Yes.

Hold it a minute, please.

(Pause.)

THE COURT: I have just received a mememorandum from Mr. Rhodes which is marked Court's Exhibit 21 and there has been a significant time interval since the beginning of the testimony on this point and the present.

This raises a collateral.

Q Unrelated to the past recollection recorded which I am allowing the witness to read.

I will first ask the witness to start again

at line 10 and read consecutively without interruption, this time, through line 21, I believe, and I will ask Mr. MacDonald to look at Mr. Rhodes' comment for subsequent treatment after the witness has concluded the reading.

Start again, Mr. Witness.

(Court's Exhibit 21 marked.)

A "Q When had you seen those, sir?

"A I wrote a title opinion for Select Enterprises some time in March, I believe, and I had before me the title opinion by another attorney and I also had that document and I had some other supporting affidavits and opinions in which I wrote the opinion saying that Select Enterprises had title to the leasehold estate.

"Q Did you have the originals of the assignments into Goodloe in your possession at the time?

"A Yes, I did.

"Q Had they been recorded at that point?

"A No, they hadn't."

MR. MacDONALD: Having in mind Court's Exhibit 21, our remaining questions will --

THE COURT: Take account of it.

MR. MacDONALD: Yes, sir.

Q Did there come a time when the deposition of

Mr. Ford was adjourned and a second deposition began?

A Yes.

Q Whose deposition was begun at that point?

A I believe Mr. William Barnett gave a deposition in the interim period.

Q I would like to direct your attention to Exhibit 175 and ask you if you can identify that as a transcript of the Barnett deposition taken on that occasion?

A Exhibit 175 appears to be a transcript of the questions and answers that I heard on that occasion.

MR. MacDONALD: It is stipulated that Gerald Owen, if called as a witness, would testify that he was the court reporter who recorded, in stenographic form, the questions and answers and thereafter prepared 175 as a typewritten transcript of his notes, and that this exhibit is that transcript.

Subject to that stipulation, we offer the exhibit together with Government Exhibit 9-E, as the document then marked during the course of the deposition as Deposition Exhibit 2.

I direct counsels' attention to page 6 beginning at line 9, through page 7, line 4, and I direct Mr. Peterson's attention to that question beginning at line 9

on page 6, as well.

THE COURT: Let's ask the questions.

Can you, without the aid of the transcript, recite verbatim the questioning as it was put on those pages and the answers as they were put on those pages?

THE WITNESS: No, sir.

THE COURT: Having looked at those questions and answers, can you say with reasonable certainty that those were the questions put verbatim and those were the answers verbatim?

THE WITNESS: Yes, sir.

THE COURT: You may therefore read those questions and those answers as past recollection recorded.

MR. GOLDMAN: May I have a second for a note, please?

THE COURT: You sent me one note about using it for refreshment.

MR. GOLDMAN: This is a different matter.

THE COURT: I will deal with that, your previous note and the last note in this connection as follows:

Having refreshed your recollection from the verbatim transcript, can you now, without the aid of the transcript, recite verbatim what the question was and what the answer was, or do you still require the record itself

to give the exact questions and answers?

THE WITNESS: I would require the record itself.

(Court's Exhibit 22 marked.)

THE COURT: The objection of Mr. Goldman is marked Court's Exhibit 22 and I show the objection to Mr. MacDonald.

MR. MacDONALD: I have an additional question which I would like to substitute for the pending question in respect of this particular deposition session.

THE COURT: I will withhold ruling on the objection until I hear your additional question.

Q Would you tell the jury who was present in the room on the occasion of Mr. Barnett's deposition being taken?

A I recall --

MR. GOLDMAN: Objection, your Honor, to the question.

THE COURT: Overruled.

A I recall those present as being myself, my attorney Jerry Jordan, Mr. Bob Ford and Mr. Barnett and, of course, the court reporter.

THE COURT: Well, the defendant Ford has asked that the effect of the testimony be limited to him-

self.

MR. GOLDMAN: No. That is as to the question --

MR. SEGAL: I move for that, your Honor.

THE COURT: That's what I understood the objection to be.

MR. GOLDMAN: The objection was made to the question, as to Mr. Barnett. That was the last question.

THE COURT: Just read your memorandum to me and see.

(Court's Exhibit 21 handed to Mr. Goldman.)

MR. GOLDMAN: That was handed to your Honor.

May I write an additional note?

THE COURT: Let me see what you had before you write anything additional.

(Pause.)

THE COURT: It says that the evidence may not be used against the other defendants, signed by Mr. Ford.

I don't know why you are making that objection, but I suppose you have a reason.

MR. GOLDMAN: It was in response to a question concerning Mr. Barnett's deposition that this was handed to your Honor, following that question.

I am sure the record would so reflect.

MR. SEGAL: I would so move as to this evidence

and the limitation that I request --

THE COURT: The evidence that is now being adduced will be considered limited to the person who made the statement. Mr. Barnett was then under examination, is that correct?

MR. MacDONALD: Yes, your Honor.

THE COURT: The evidence of Mr. Ford's testimony on the previous occasion will be limited to Mr. Ford, the reason for it being that these statements were being made in 1972 and the time frame that we have been referring to is 1970, so that it cannot be said that they were speaking for the others in 1972 but they were speaking for themselves, certainly.

Mr. Ford's testimony pertains to Mr. Ford.

Mr. Barnett's testimony pertains to Mr. Barnett. I am referring in each instance to the testimony given in 1972.

This does not relate to any matters that we have heretofore considered in 1970. The 1970 matters and statements have been accepted subject to connection as part of the claimed combination, alleged combination of the defendants, where if there was a combination and a personal was a member of the combination, another person of the combination could be speaking for him.

I have used my words so as not to create any impressions. I am not trying to convey to you what the facts are. You are going to have to decide the facts but, to restate it possibly in less obscure terms, the charge in this case is that there was a combination or partnership or conspiracy among persons named here. Unless the conspiracy is established and each and every element of it is established beyond a reasonable doubt, including, particularly, a person's membership in that conspiracy, nobody could be talking for any particular person other than himself but, if he was a partner of other people and the jury were to so find under the burden of proof as I have given it to you, then other partners could be talking for him and that relates to the 1970 period.

But, after the partnership is deemed disbanded, and we deem it disbanded by 1972, they could only talk for themselves and that is the reason why the testimony that is now being read and has been read as to Mr. Ford and what he said in 1972 is usable only against him in the charges in this case and the testimony of Mr. Barnett in 1972 is usable only against him in this case.

Does that cover it, gentlemen, specifically and graphically or does somebody want me to underscore it

some more in some other words?

MR. RICHMAN: I think that's enough.

THE COURT: I now have a further memorandum from Mr. Rhodes, which is marked Exhibit 23, and the objection is overruled.

I think we have covered it now from every corner.

(Court's Exhibit 23 marked.)

xx 3 BY MR. MacDONALD:

Q Mr. Peterson, would you direct your attention to line 9 on page 6 through the completion of the answer on page 7 at line 4 and read those questions and those answers to the jury?

A "Q All right. I hand you what has been marked as Defendant's Exhibit 2 and ask you to identify it, sir.

"A This was copies of minutes of the board of directors at Select Enterprises, Inc.

"Q It was utilized by you in the preparation of your balance sheets?

"A Yes. They were referred to because the board of directors had the primary ideas for determining values.

"Q Which page of these minutes deal with

the Comanche County oil prospect? Would that be on page 3, sir?

"A It was the third page. The pages are not numbered as such.

"Q And this establishes a value of $4,380,000 for those oil properties?

"A Yes.

"Q All right.

"Is the original of this document signed or is this document, Defendant's 2 signed?

"A Yes, it is. It was a photocopy but it was signed by Mr. Knisely and Mr. Hanson."

Q Would you address yourself, please, to the exhibit before you on the rail and can you identify that by the current tag that appears thereon and tell us if that was the document referred to in the course of the testimony you just read?

A Exhibit 9-E --

THE COURT: He wants to know whether Trial Exhibit 9-E is the Deposition Exhibit 2.

THE WITNESS: It is.

Q Would you turn to page 3, please, and direct your attention to the paragraph in respect of the oil and gas property and would you read that paragraph to the jury,

please?

MR. SEGAL: Same objection, your Honor.

THE COURT: Same limitation; is that what you mean?

MR. SEGAL: Yes.

THE COURT: Yes. The same limitation applies to the exhibit as to the testimony.

A "After resumption of the board of directors meeting after recess, the president called the meeting to order and noted that all board of directors were present. At this time the board undertook a discussion of the value of its oil and gas properties in Comanche County, Texas. At this time the board received, read and discussed a report of Joe Brown, an engineering geologist. The board took note of the fact that this report was furnished to the Securities and Exchange Commission as a part of a title opinion setting forth and describing the oil and gas leases which the company owns in Comanche County, Texas, those leases being set forth and described in great detail in a title opinion prepared by Robert E. Ford under date of January 26, 1970. The board of directors then heard a report from E. D. Goodloe concerning the current

production status of said leases and the future production for said leases and, in general, supplemental reports concerning the value of said property. The board of directors then instructed Mr. Goodloe to commence drilling operations for the development of said property. On a motion made by Albert Hanson and seconded by E. D. Goodloe that the value of the company's oil and gas leases in Comanche County, Texas, as set forth and described in the company's records and as set forth and described In the above title opinion be set in accordance with the report of Mr. Joe Brown covering said property. The following resolution was unanimously passed by the board:

"Resolved: That the value of the oil and gas properties owned by the company as set forth and described herein be and the same hereby established at a net value of $4,380,000."

Q Following the conclusion of Mr. Barnett's deposition, did Mr. Ford's deposition resume?

A Yes.

Q I would like to direct your attention back to the transcript marked 176 and to page 38 thereof, beginning at line 12.

THE COURT: Anything read from this deposition at this point will again be taken as past recollection recorded, I assume, and relates only to the defendant Ford.

MR. CONCANNON: May I have an objection and hand up a note before any further testimony comes in?

THE COURT: No. Hand up your motion. We have covered the whole point.

Go ahead.

MR. GOLDMAN: May I have a second with Mr. MacDonald, please?

THE COURT: Yes.

(Pause.)

THE COURT: What is the question?

MR. MacDONALD: The question beginning at line 12 and the answer through line 24 we would like read.

THE COURT: All right.

A "Q We obtained a reference from Mr. Barnett which indicated that possibly this title opinion that you wrote in connection with the Comanche County oil properties was dated January 26, 1970, and lease so reflected in these minutes on the second page. Would that be quite possibly the correct date of that title opinion?

"A No, it isn't. That opinion was done just prior to that board meeting and I wish I had a copy of it. Mr. Goodloe and the boy, they took my entire file with them. Maybe when Roma Dell gets back, we can dig around. I don't know. They may have wanted a date in January, but I know it was not done except for -- specifically except for this board meeting."

MR. MacDONALD: We have no further direct examination.

THE COURT: Mr. Concannon's memorandum is marked Exhibit 24. It is noted.

(Court's Exhibit 24 marked.)

CROSS-EXAMINATION

BY MR. SEGAL:

Q You indicated that you are presently incarcerated in a Federal penal institution?

A Yes, sir.

Q Do you have a guard with you?

A No, sir.

Q Have you been living in a penal institution here while you were preparing for your testimony?

A No, sir.

Q Have You been living with your wife?

* * *

Q Would you read out loud the question and answer starting on 6 and ending on 8.

THE COURT: You see it is not the same thing at all.

A (Reading:)

"Q And you have prepared this figure based upon the reports which were furnished to you by Mr. Goodloe and Brown?

"A Mr. Brown, yes. Just Brown actually."

Q And that question referred to Southwest Duster oil field valuations; is that correct?

A I believe that is correct.

MR. STOKAMER: Thank you.

I have no further questions.

CROSS-EXAMINATION

BY MR. GOLDMAN:

Q You said that when you began with the government you received no promises. Just when did you begin, sir?

A I began with the government in probably December of 1970. I went to the Securities --

Q I'm talking about this case. With respect to the United States Attorney's Office, when did you first speak to Mr. MacDonald?

A I don't recall the initial date of Mr. MacDonald's contact.

Q What is your best recollection, sir?

A Possibly the early part of this year.

Q That is your best recollection?

A I am going to say -- In answering your question, I am trying to remember a trip I did make to New York to confer with Mr. MacDonald, and that was my first association with Mr. MacDonald. Mr. MacDonald --

Q Sir, I am asking you for the time.

A The early part of this year.

Q You had to take a minute or two minutes to think that over, and that's your best answer. This is 1975. You don't recall the particular date or month in 1975; is that correct?

MR. MAC DONALD: Objection, your Honor.

THE COURT: Sustained.

And he didn't take two minutes.

Q Sir, when did you begin your prison term?

A I believe it was May 28, 1972.

Q Since that time how many days have you spent in New York?

A Approximately fifteen days.

Q Are you now staying at a motel or a hotel, without

telling me the name.

A I checked out this morning. Yes, sir.

Q Mr. MacDonald told you he would write a letter to the parole board; is that correct?

A That's correct.

Q Mr. MacDonald, of course, is a member of the Justice Department, is he not?

A Yes.

Q The Parole Board is also part of the Department of Justice; is that correct?

A Yes.

Q It is your belief certainly that his letter is going to help you get paroled early; is it not?

A I cannot make any judgment on that.

Q You certainly hope that, don't you?

A I hope it does, but there is no belief on my part.

Q Sir, you testified as to one of the government exhibits, No. 169, that the notary on that was Robert Ford, did you not?

A I would have to refresh my mind with that exhibit.

Q I believe it is in front of you.

A No, it is not here.

Q I hand you Exhibit 169, sir (handing). You testified that the notary on that was Robert Ford.

A Robert E. Ford.

Q That was when Mr. MacDonald asked you if you recognized the document; is that correct?

A Yes.

Q He never asked you who the notary was, sir, did he?

THE COURT: What difference does that make? If he didn't, it is not in the record. Let's not waste time on that.

MR. GOLDMAN: I think it shows evidence that the witness blurted --

THE COURT: It does not show anything more than the question was not asked.

Q So none of the documents you identified, other than this document, had the name Robert Ford on it.

A There is one other.

Q Which exhibit is that, sir?

A It was in this line of exhibits. I do not recall the specific exhibit.

Q None of the documents between you and Mr. Goodloe were drawn by Mr. Ford; is that correct?

A There were no documents between Mr. Goodloe and

myself.

Q Mr. Ford never drew up a lease for you or a contract?

A No, sir.

Q He never drew up an assignment for you?

A Unfortunately, no.

Q You were rather unhappy with Mr. Ford, were you not, for not drawing up these documents?

A Yes.

Q Subsequently in 1970 you and your brother came to Mr. Ford and asked him to represent you in a case.

A I don't believe I ever asked Mr. Ford to represent us in a case.

Q Did you and your brother come to Mr. Ford and ask him to consider representing you in a suit you had against Blue Cross?

A No.

Q Did you have a suit against Blue Cross, sir?

A No.

Q Were you involved in any litigation with Blue Cross concerning a substantial amount of accounts receivable?

A No.

Q Were you part of a company called Zodiac?

A Yes.

Q What was the name of it?

A Zodiac Enterprises, Inc.

Q What kind of company was that?

A It was a corporation. The stock was owned entirely by myself. The company had numerous businesses.

Q Was that company, sir, involved in a dispute with Blue Cross for a considerable amount of money?

A That company was not.

Q Was the company called Physical Training?

A Physical Training was not involved directly.

Q Excuse me, sir?

A Physical Training, Inc. was not involved directly.

Q Were you or a company of which you were a principal involved in a dispute as to a considerable amount of money that Blue Cross was denying payment for?

A Blue Cross denied payment to another company which owed us the money.

Q Did you contemplate bringing a suit against Blue Cross?

A Yes.

Q Did you speak to Mr. Ford about that?

A Not about his representing us in bringing the

suit.

Q You went to consult him about it, however?

A Not about his representing us in any suit.

Q Did you consult him about that case, sir?

A We may have talked with Mr. Ford about the accounts receivable being outstanding.

Q He didn't represent any of the companies involved, did he, sir?

A No.

Q When did you go to see him?

A I visited with Mr. Ford on a number of occasions.

Q I am talking with respect to this matter.

A I never did go to see Mr. Ford to speak to him specifically about that particular matter.

Q You owned some nursing homes, sir.

A Do I?

Q Yes.

A No.

Q Did you in 1970?

A Yes.

Q Were you involved in any litigation with nursing homes and Blue Cross?

THE COURT: I think we are going too far afield.

Q Sir, in 1970 did you see Mr. Ford with respect to representing you in a suit brought by the Cisco Bank on a note?

A We talked to Mr. Ford about that suit, yes.

Q What is the best of your recollection of the time, sir?

A Possibly in the summer of 1970.

Q Did you also send a copy of the papers that were served on you in that case to Mr. Ford?

A I don't believe I did. My brother may have, but I'm certain I did not.

Q Did there come a time when, to your knowledge, Mr. Ford had a suit with your brother?

THE COURT: I think you are going too far afield when you use collateral relationships. They formed no part of the direct examination and are remote.

MR. GOLDMAN: I will be off this in one minute, your Honor.

THE COURT: I think you are off it now.

MR. GOLDMAN: May I ask as to a dispute to show bias?

THE COURT: I have had that in mind in allowing the extension of your inquiry, so I think they have now passed the boards.

Q I show you Defendant Ford Exhibit B marked for identification. Do you recall ever seeing that letter?

A I don't recall having seen this letter.

Q Does the date on top of that letter refresh your recollection as to when Mr. Ford was consulted by your brother about the Cisco Bank matter?

THE COURT: That's excluded, vigorously. His relations are not part of the permissible inquiry here.

Q After you saw Mr. Ford in December of 1970 and discussed this matter, did you see --

THE COURT: Discussed what matter? The matter I have excluded?

MR. GOLDMAN: The Cisco Bank matter. I'm going to the next one.

THE COURT: You are giving testimony now that the witness rejected. There was no testimony allowed on that subject. Ask your question properly.

MR. GOLDMAN: I believe he did say that --

THE COURT: Ask your question properly.

Q In the year 1971 did you have occasion to come to Mr. Ford to discuss a legal problem with him, sir?

A I visited with Mr. Ford, I believe, in August of 1971.

Q Did you discuss a legal matter with him at that

time?

A Yes. I discussed a matter that could have had legal implications at that time.

Q You discussed that with a view to having him represent you, sir?

A No.

Q Did you go to consult with him and ask for his legal advice?

A No.

Q What did you discuss with him at that time, sir?

THE COURT: I think that that is enough of that.

Q Sir, when you went to see Mr. Ford, when you say you saw him in 1969, where was his office?

A His office was in the Mims Building in Abilene, Texas.

Q Mr. Goodloe also had an office in that building?

A Mr. Goodloe had an office in the office of Mr. Ford. to the best of my recollection.

Q Did you subsequently see Mr. Ford at that office?

A I believe I did not see Mr. Ford at that office any more. I believe he moved shortly after that particular visit.

Q When was that?

A In the latter part of 1969.

Q In 1972, did you give a deposition involving the same matter that Mr. Peterson and Mr. Ford were examined on?

A At that time I don't recall giving a deposition.

Q Did you give a deposition in the matter?

A I believe I did, yes, sir.

Q Do you have that with you?

A I do not.

Q Have you reviewed it prior to testifying?

A No.

Q Have you reviewed it within the past year?

A No.

Q In that document, sir, or in that testimony, you didn't say that you met with Mr. Ford in 1969, did you?

MR. MAC DONALD: Objection.

THE COURT: Sustained as to form.

Q You testified that the arrangement with Mr. Goodloe was that he was going to own 50 percent of these gas and oil leases, and you and your brother would share the other 50 percent; was that correct?

A Yes.

Q You would have 25 percent; is that correct?

A That's correct.

Q You never made any record to this day, have you, of your 20 percent interest in that?

A I don't understand what you are saying because there were no legal documents to record. Legal documents were never drawn.

Q Was it your view in October of 1970 that you owned 25 percent of the Comanche oil and gas leases?

A Yes.

Q Sir, I show you Defendant Ford Exhibit D for identification and ask you if you recognize the signature at the bottom of that. I ask you if you can tell me what that is, sir. Is that your signature at the bottom?

A Yes.

Q Can you tell us what this is, sir?

A This is a copy of a note, a copy of a single payment note.

Q What day is it, sir?

A December 10, 1970.

Q Attached to that document, the second and third pages are what, sir?

A A financial statement of James E. Peterson, statement of net worth.

Q That's you, sir?

A Yes.

Q Is that signed by you at the bottom?

A It is signed by me.

Q And the third page is also signed by you?

A The third page is.

Q Is there a fourth page also?

A Yes. There are four pages. The second page is numbered page 1.

Q The three pages are of your net worth statement, your financial statement?

A That's correct.

MR. GOLDMAN: I offer it, your Honor.

THE COURT: What part do you offer?

MR. GOLDMAN: The entire exhibit.

THE COURT: How is that relevant to direct examination?

MR. GOLDMAN: Can I give your Honor a note or make an offer of proof on the record?

THE COURT: Yes. Also, consider whether there is a particular element in there that you want rather than the totality of it. This man's general financial status is not an issue in this case.

(Pause)

THE COURT: You may ask a question directed to that. That doesn't make the document admissible. Ask a

specific question.

Q Sir, in your net worth statement --

THE COURT: "Did you include" --

MR. GOLDMAN: May I ask what he does not include?

THE COURT: That's of no significance to this case. The defendants are not concerned, nor is the government concerned. You are concerned with something that is omitted, perhaps.

MR. GOLDMAN: Is your Honor denying my offer of the document in evidence?

THE COURT: Yes.

Q Sir, this net worth statement, does it mention any ownership of oil and gas leases by you?

A It does not.

Q It mentions a considerable amount of stock in other properties you own; is that correct?

THE COURT: Is that a backhanded way of circumventing my ruling? If it is, please desist.

Q Look at Exhibit 176 in front of you, sir. That's the deposition of Mr. Ford. That deposition was in March of 1972; is that correct?

A I believe that is correct.

5/3 Q Do you recall whether any copy of that title opinion was shown to Mr. Ford at that deposition?

A I don't believe that a copy was shown to Mr. Ford, although I cannot say for certain.

Q Let me refer you, sir, to page 6, lines 5 and 6, and I ask you if that refreshes your recollection.

A I believe Mr. Ford is stating that he does not have a copy of the title opinion.

Q Do you recall him saying that?

A Yes.

Q Sir, again, may I ask you to turn to page 38, line 18. You can read the question ahead of it also if you wish just to refresh your recollection.

A (Pause)

Q Do you recall Mr. Ford saying that he wished he had a copy of the opinion?

A Yes.

Q He didn't have one at the time he testified; is that correct, sir?

A He stated he did not have one.

Q Do you recall anyone showing him one?

A I do not recall anyone showing him one.

Q Sir, when did Mr. Ford suggest that perhaps you should consider bringing suit against Select Enterprises in order to establish a lien against the oil and gas leases?

A I believe that was in August of 1971 that we discussed that matter.

THE COURT: We will suspend here for a short recess.

(Recess)

(During the recess the following proceedings took place:)

MR. KRIEGER: If your Honor please, in order to keep you fully informed, Selwyn Weber is still in the cardiac intensive care unit in Mount Sinai. The suction device inserted into the left wall will not be removed earlier than tomorrow, October 10, 1975.

I understand that among other medications he has been receiving Demerol.

After removal of the suction device he will be hospitalized, I am told, for four or more days, provided his condition remains stable.

I renew, although I believe it unnecessary, the motions previously made and again assert lack of authority to proceed in his absence.

I would also like to indicate, your Honor, that communicating with him is difficult at best, and whether the problem arises because he is distraught or medicated, I don't know. I am not prepared to say.

That's my situation, your Honor.

THE COURT: We are still awaiting competent proof of the origin and actuality of the medical treatment, and as I told you on the record -- if not, this will record the fact -- that the Assistant or other surgeon involved there advised me that he would report the first thing tomorrow morning, approximately nine o'clock, as to what the actual situation was. I will await the report before taking any further steps with respect to Mr. Weber.

MR. KRIEGER: If your Honor pleases, if there is an open area concerning the origin and/or authenticity of the ailment, then I would strive to bring whatever proof would satisfy the Court as to what I understand the facts to be, and I would request, if the documents supplied by Mount Sinai are insufficient to satisfy the Court, that we have a hearing as to what exactly occurred.

THE COURT: We will have that hearing as soon as we get a report, and come to a conclusion. I don't propose to allow myself to be mousetrapped by this defendant who suddenly fell sick at a moment which appeared to be critical to his position in the case. I want to be satisfied of the genuineness and necessity for his

absence, and also whether there are not appropriate measures that can be taken in connection with the case before considering your motion for a mistrial.

I take it that that is what you are moving for?

MR. KRIEGER: A severance, of course, would be in the nature of a motion for a mistrial, yes, your Honor.

THE COURT: Nothing is going to be gained by the colloquy, and I don't intend to get into a colloquy for you to recite it to somebody else under other circumstances.

MR. KRIEGER: I'm not getting into a colloquy with regard to it.

I want to make two statements. One, for whatever it is worth, I have no reason to even suspect that Mr. Weber's illness remotely resembles malingering. I believe it was sudden, unexpected, and of a total emergency nature.

THE COURT: That merely expresses your own good faith in the matter. I'm not questioning your good faith. All I assume is that you are going by what you have heard.

MR. KRIEGER: Absolutely.

THE COURT: You are entitled to respect what you hear, and there is not even a scintilla of a suggestion

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to the contrary.

MR. KRIEGER: Of course there is only one thing which makes me very ill at ease in this proceeding, your Honor. I am almost reluctant to address myself to the Court for fear of somebody saying at a later time that I have waived a right of the defendant.

THE COURT: If that becomes important you will express your qualms and point out this page on the record to the appropriate tribunal as to your recurrent qualm and upset.

MR. KRIEGER: I hope they recognize it.

THE COURT: They will give it appropriate consideration, or such consideration as may be appropriate -- whichever way you want to put it.

MR. KRIEGER: These things, unfortunately, come back to haunt somebody sometime.

(Recess)

T6 am

Q Sir, referring you again to Exhibit 176, page 38 and line 12, will you read the first line or read the question, would you please, sir?

THE COURT: This is another case where you are going to read a question without an answer?

Q Would you read the question and answer, sir?

A "Q We obtained a reference from Mr. Barnett which indicated that possibly this title opinion that you wrote in connection with Comanche County oil properties was dated January 26, 1970, and lease so reflected in these minutes on the second page --"

Q Can I stop you there, sir, and I will let you finish it.

Do you recall,looking at this, whether in fact that was the question, and I refer you again to "and lease so reflected in these minutes on the second page", do you think that that is correct?

A I think it is a typographical error here. I think "lease" should have been "was".

Q Will you continue reading, please?

A "Would that be quite possibly the correct date of that title opinion?

"A No. It isn't. That opinion was done just prior to that board meeting and I wish I had

a copy of it. Mr. Goodloe and the boy, they took my entire file with them."

Q Let me stop you there and I will let you finish the answer.

Do you recall whether Mr. Ford said, "Mr. Goodloe and the boy" or "Mr. Godfrey, Sullivan & Boyd"?

A I just --

MR. SEGAL: Objection, your Honor. That record speaks for itself.

THE COURT: Sustained.

Well, no, I will let the witness be asked whether he has any recollection other than the recorded information.

THE WITNESS: I don't have any other recollection other than what is on this document.

Q Do you have any recollection that Mr. Ford said, "Mr. Goodloe and the boy"?

A I can't say specifically, other than what the document says.

Q Do you want to finish it, sir, and I will have no further questions?

A Maybe when Roma Dell gets back, we can dig around. I don't know. They may have wanted it dated in January but I know it was not done except for, specifically

except for this board meeting."

Q One last question.

Having read that does that refresh your recollection that Mr. Ford did not give any more definite recollection as to whether or not Mr. Ford had a copy of that opinion before him?

MR. MacDONALD: Objection.

THE COURT: I will let him answer the question, if he can.

A Mr. Ford stated that he did not have a copy of the title opinion.

MR. GOLDMAN: No further questions.

THE COURT: Any questions by any other defense counsel?

CROSS-EXAMINATION

BY MR. RHODES:

Q I am A. L. Rhodes from Abilene.

Do you know Mr. L. G. Rhodes, personally?

A I met Mr. Rhodes in March 1972 and we did take his deposition. That was the only occasion that I met him and I have not seen him since.

THE COURT: Now, that man to whom you have just referred to is not the lawyer who is questioning you now?

THE WITNESS: It not the lawyer.

MR. EHRLICH: No further questions.

THE COURT: Is there any other defendant who wants to examine?

(Pause)

Is there any redirect examination?

MR. SUSSMAN: No, your Honor.

THE COURT: Thank you very much.

You are excused.

(Witness excused.)

MR. MAC DONALD: Your Honor, there is a stipulation that the exhibits, Government Exhibits 328 through 333 and 340 were produced by the defendant Bissett during the course of the grand jury proceedings in this matter. In addition, Government Exhibits 335 and 336 would be authenticated as business records by the custodian of records of Bissett & Logar if called as a witness.

In addition, Government Exhibit 344 would be authenticated by the court reporter taking that transcript.

We offer each of those exhibits and, in addition, we offer Government Exhibits 343 and 345 on the basis of their self-authenticating character.

Finally, it is stipulated that at all relevant

times no registration statement was in effect as to any Select Enterprises, Inc. security.

THE COURT: No registration under the security laws of the United States?

MR. MAC DONALD: That's right.

Subject to those stipulations, the government rests.

THE COURT: What about these exhibits?

MR. ROONEY: We don't object to the documents that have been produced, 328 to 333, I think. No objection to the bank records if they deal with this case. To the extent they don't, we do object; but I don't think they are being offered with respect to the other matters.

MR. MAC DONALD: If irrelevant materials are included in those exhibits, we will agree to their excision.

MR. ROONEY: We object to 344 and 343 and 345.

MR. RICHMAN: There already has been an objection on behalf of the defendant Titlow as to 343. Your Honor ruled on that at the time.

THE COURT: Exhibit 343 has to do with the mining company.

MR. MAC DONALD: Each of those matters are interrelated.

the resting and to be considered in connection with the motions, the motions are now in order.

I would like to have you address your motions legally, without the necessity, as far as I am concerned, of reference to the evidence which I have been following very closely and am aware of.

I think we will take the motions in the same order of the appearances that we had during the trial.

Mr. Segal.

MR. SEGAL: Your Honor, at this time I would move that Count 1 of the indictment be dismissed for failure of the Government to prove that there was a single conspiracy and, instead, has proved a multiple conspiracy, if anything.

THE COURT: I will take that motion as made by every party to the case and I will deny that motion for every defendant in the case, reserving to Mr. Krieger his special problem relating to the illness and hospitalization of his client.

MR. SEGAL: Secondly, I refer the Court to Count 37. I believe that was a count we raised a matter on yesterday and respectfully --

THE COURT: Mr. MacDonald, why shouldn't Count 37 be dismissed?

MR. MacDONALD: John Wells testified he agreed

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to purchase the shares from Essex Securities and the cancelation, a day 1 ater, is an interesting fact but not one which requires the dismissal of the count which charges, on May 8, a purchase of 200 shares of securities.

THE COURT: Mr. Segal's point relates to use of the facilities of interstate commerce.

MR. MacDONALD: Wells testified he received a call from a Denver brokerage house and offered to sell 200 shares of Select stock and he accepted the offer.

THE COURT: I think that is right, isn't it, Mr. Segal, technically?

MR. SEGAL: I believe that is so, your Honor.

THE COURT: Until that testimony, I was following your point but I think that testimony is sufficient to cover Count 37.

MR. SEGAL: Your Honor, at this time, pursuant to Rule 29, I respectfully move to dismiss with regard to all counts as to the defendant Joe Truman Boyd for failure to make out a prima facie case against him.

THE COURT: In the Court's opinion, sufficient evidence has been adduced from which a rational jury could find beyond a reasonable doubt that the allegations of the indictment have been established and, accordingly, the motion is denied.

MR. SEGAL: I have no further motions, your Honor.

THE COURT: Mr. Stokamer?

MR. STOKAMER: Yes, your Honor.

On behalf of the defendant Goodloe, under Rule 29, I move, first, to dismiss the first count on the grounds of insufficiency. Specifically, that there is insufficient direct testimony of Mr. Goodloe's participation in any conspiracy to allow any hearsay which established that he was a member ofthe conspiracy.

With respect to the remaining counts, 29 through 40, 41 through 51 and 52 and 53, I similarly move for dismissal on the grounds of insufficiency in that not enough evidence has been shown to tie Mr. Goodloe in either as a principal or as an aider and an abettor.

THE COURT: The motions are denied for the reasons similar to those already given.

Mr. Goldman.

MR. GOLDMAN: Yes, your Honor.

Pursuant to Rule 29, I move for a judgment of acquittal, first of all, on the first count on the grounds of insufficient evidence; secondly, on the grounds that whatever conspiracy has been shown was part of this conspiracy and there was no venue in New York.

As to the remaining counts, I move for a dismissal first on the grounds of insufficient evidence and, secondly, on the grounds that whatever evidence of the conspiracy that is shown is not a conspiracy such as would make Mr. Ford a co-conspirator under Pinkerton, under any of the counts, nor is he an aider an abetter or a direct participant in any of those counts.

THE COURT: Mr. MacDonald, what do you say about the venue point?

MR. MacDONALD: The auction market that Alan Segal described and John Wells described establishes sufficient venue basis for prosecution in this defendant.

THE COURT: The motions of the defendant Ford are denied.

Mr. Krieger, I am going to let you reserve your motions until we hear from the hospital tomorrow morning, as indicated by them.

MR. KRIEGER: Yes, sir.

THE COURT: Mr. Richman.

MR. RICHMAN: If your Honor please, pursuant to Rule 29 on behalf of the defendant Titlow, I respectfully move for an acquittal.

As to Count 1 I move on the grounds that there is no evidence, not one scintilla of evidence, that would

connect the defendant with having been a part of a conspiracy to defraud the Government or anyone else.

There was not one scintilla of evidence that what he did was unlawful, wilfull or that he knowingly combined with anyone else for that purpose.

As to the other counts, your Honor, the defendant Titlow again moves for dismissal under Rule 29 because there is absolutely no evidence, not one scintilla, not one word, not one telephone call, not one telephonic communication that ties up the defendant Titlow with what has happened in this case.

THE COURT: Mr. MacDonald, will you recall to my attention the particular points relating to Mr. Titlow?

MR. MacDONALD: Yes.

In Mr. Titlow's deposition before the SEC, he was asked if he had signed a contract in respect of the sale of the shell to Joe Boyd Associates and he denied having executed such an agreement.

With respect to the connection to interstate commerce, nearly half or at least a large number of the mail counts were the letters sent by or to Nevada National Registrars, Titlow's firm.

THE COURT: What was his connection with that firm again?

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MR. MacDONALD: With respect to the mail fraud counts, nearly half of the 1 etters established mailings to or mailings from Nevada National Registrars, as to which he was the president and the sole person beyond Miss Smith who operated that transfer agency.

The Government's position is that the establishment of the corporation was with a view toward the distribution of its securities, that the $40,000 price best evidences the fact that no normal corporate use was envisioned but rather a distribution of securities was envisioned and if there were any doubt in that regard, Mr. Titlow's having falsely denied under oath to the SEC the basic agreement of sale puts the matter beyond a reasonable doubt at this point, at least for a Rule 29 motion.

THE COURT: Certainly for the present, and that seems to be sufficient, the motions of the defendant Title are denied.

Mr. Ehrlich.

MR. EHRLICH: Yes, your Honor.

Defendant Mullenax, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, requests the Court for a directed verdict of acquittal inasmuch as with respect to each count and each and every element of each

bsll

respective count the prosecution has filed to meet its burden of proof and the evidence has clearly insufficient to sustain it.

THE COURT: The motions to dismiss the indictment or a directed verdict for the defendant Mullenax are denied.

MR. EHRLICH: Thank you, your Honor.

THE COURT: Mr. Lesser.

MR. LESSER: If your Honor please, on behalf of defendant Knisely, I move for a judgment of dismissal on the ground that there is absolutely no evidence that Knisely knowingly and wilfully participated in the conspiracy. As a matter of fact, the Government's case affirmatively proved that Knisely was not a participant and that Knisely had no idea what this was all about and was merely a nominee.

THE COURT: Mr. MacDonald.

MR. MacDONALD: In the Testimony before the Securities and Exchange Commission, the defendant Knisely falsely denied knowing Alan Segal, the person who he met in the hotel room with on the occasion of his signing the Riverside and Diamond Bros. contracts, later presented to the SEC.

THE COURT: Well, the negative does not estab-

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lish the affirmative, does it?

MR. MacDONALD: In respect of the argument that he lacked a sufficient intention with a view toward the distribution of securities, signed the letter to shareholders and signed the minutes and the other documents exhibiting the overall purpose and intent of the persons in control of the Select Enterprises, Incorporated, it does.

THE COURT: Is there anything else?

MR. MacDONALD: Aside from the documents which bear his signature, asserting the claims that they assert, and the proof in respect of his willingness to serve as a tool by Mr. Boyd, that is the proof that Joiner reported to the Court about Boyd's using Mr. Knisely, we have nothing further to call to your Honor's attention.

THE COURT: You mean on an aider and abettor theory?

MR. MacDONALD: That's right. That is a man who allows himself to be employed and makes statements out of ignorance, if we are willing to assume that for the moment, that --

THE COURT: You mean reckless indifference to the truth?

MR. MacDONALD: Yes, sir.

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THE COURT: I will think about that overnight.

Mr. Rhodes.

MR. RHODES: We move for a directed verdict of acquittal for defendant Barnett based on the insufficiency under Rule 29 and further we bring up the venue question that the Government has not proven the venue, that the Government has not proven any matter or act of Barnett relative to venue.

THE COURT: If there was a conspiracy and there was activity in this District, that is enough venue.

MR. RHODES: Well, I would further point out to the Court that there has been no showing of independent evidence whatsoever that Mr. Barnett knew of any falsity of any statement given by him.

THE COURT: The motion for the defendant Barnett is denied.

Mr. Berger.

MR. BERGER: May it please the Court, I have a written motion, your Honor, which --

THE COURT: Hand it up.

MR. BERGER: I am going to take it under adivsement overnight. It deals both with my application --

THE COURT: What does the motion say, in brief?

MR. BERGER: Pursuant to Rule 29, Defendant

Rappaport moves to dismiss all the counts of the indictment, and, your Honor, addressing myself particularly at this time to Count 1 of the indictment, the conspiracy count, there has been no direct evidence to show either that the defendant Rappaport had knowledge of the conspiracy or that he participated in the conspiracy.

In addition to that, the direct evidence is to the contrary, that Mr. Rappaport did not have knowledge of the conspiracy. Any other evidence in this case which is circumstantial does not lead to the conclusion that Mr. Rappaport had knowledge which is also consistent with the conclusion that he did not have knowledge of the conspiracy.

The other evidence in the case is hearsay evidence, which is not admissible as to Mr. Rappaport until such time as the Court is of the opinion that Mr. Rappaport participated in the conspiracy.

So, what I am saying is that the evidence against Mr. Rappaport is such that no reasonable jury could find beyond a reasonable doubt that he participated in the conspiracy. That is as to Count 1.

There is no evidence as to any ofthe other counts, which are 2 through 53.

In addition to that, Counts 52 and 53 are in-

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applicable. Title 18, Section 1001 of the United States Code is not applicable to an investigationby the Securities & Exchange Commission, particularly where the defendant who has been charged in those counts was not called down before the Securities & Exchange Commission and given certain warnings by the SEC.

The SEC has an in-house policy that when the procedure is investigatory, rather than administrative, and there may be criminal liability, they give the witness a warning as to Title 18, Section 1001.

That is similar to the warning that was given by the IRS with regard to Miranda warnings, in which the Seventh Circuit held that when the IRS did not follow its own in-house policy, any statement made by a defendant was suppressed.

I have a memorandum of law on that. So, on the whole, I feel that the entire indictment --

THE COURT: Are you talking about the testimony Mr. Rappaport gave in the SEC hearings?

MR. BERGER: Mr. Rappaport did not testify before the SEC. What I am saying is that if Mr. Rappaport had been called down before the SEC, then perhaps Title 18, Section 1001 would be applicable; perhaps. There are many Courts that have held that Title 18, Section 1001

is not applicable to any Federal agency involved in an investigation, in a police action, such as the FBI.

THE COURT: Mr. MacDonald, address yourself to Count 52 and 53 with respect to the defendant Rappaport.

MR. MacDONALD: He prepared both contracts which are the subject of those counts. Those contracts were delivered by, I believe, in the one case, Mr. Schneiderman; another case Mr. Azzarone, to the SEC. It is our contention that a preparer of a false and fraudulent document can be prosecuted, whether or not he personally makes the delivery of the document.

THE COURT: I think that that is right.

The motions for the defendant Rappaport are denied.

I will examine your memorandum and consider it an application for reargument and let you know tomorrow morning if there is any change.

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MR. DULSKY: May it please the Court, pursuant to the provisions of Rule 29, on behalf of the defendant I move for a judgment of acquittal and a dismissal of the indictment in its totality, there being no prima facie case against him. The evidence is totally insufficient.

There is no direct evidence of knowledge by my defendant of any conspiracy. There is no direct evidence of any agreement or participation by him in a conspiracy, or any agreement to participate in anything.

The only evidence, I respectfully submit, is evidence which may probably be considered as approaching the level of circumstantial evidence. That evidence, I respectfully submit, is subject to varying inferences. I believe that the inferences are much more consistent with innocence rather than guilt.

None of the exhibits have been tied to him. None of the testimony with respect to telephone calls, letters, none of the evidence that has come in by way of the past ten days of plenary court proceedings pursuant to counts 2 through 28, 39 through 40, have any applicability to the defendant.

With regard to counts 52 and 53, specifically in count 1(1)(3)(h), the defendant is specifically

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mentioned yet there was not one bit of testimony with respect to his participating in any meeting or being present at any meeting.

I respectfully submit there is no evidence whatsoever to tie him to anything in the case, and I therefore move that the motion be granted.

THE COURT: Is it your understanding tha circumstantial evidence is unavailable in the determination of a conspiracy?

MR. DULSKY: No, your Honor. I fully agree that it most certainly is.

THE COURT: I thought you were emphasizing there was no direct evidence and, therefore, there was no evidence.

MR. DULSKY: That's not what I am saying. I am saying there is no direct evidence, and whatever evidence there is, if it is circumstantial in nature, then in this particular case, as a matter of law, it requires a dismissal.

THE COURT: What do you say to that, Mr. MacDonald?

MR. MAC DONALD: The co-conspirator Anfang testified that he, this defendant, and Segal discussed his prospective testimony before the Securities and

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Exchange Commission and the need to shield Segal from having delivered the balance sheet. This defendant himself testified -- and his transcript is one of those transcripts subject to our offer -- gave a concocted story. Both he and Anfang falsely testified that they met at some bar and in passing the defendant delivered the balance sheet to Anfang prior to Anfang's inducing his customers to enter the marketplace.

There is direct proof of a portion of the conspiracy count in respect of giving false sworn testimony to the Securities and Exchange Commission and, of course, this defendant's own false testimony in that respect shows that he achieved that portion of the conspiracy's purpose.

THE COURT: You are not claiming that false testimony before the Securities and Exchange Commission is what this case is about, are you?

MR. MAC DONALD: Certainly a portion of the conspiracy, your Honor. A portion of the conspirators' purposes included providing false information to the Securities and Exchange Commission, both of a sworn and unsworn character.

If this is an opportunity for me to address myself to the larger question of the admissibility of

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some of the portions of the conspirator statements to the Securities and Exchange Commission, not only against themselves but as against their co-conspirators, as statements in furtherance of the conspiracy, I would seize this opportunity. Your Honor may recall --

THE COURT: Could that be considered a separate conspiracy?

MR. MAC DONALD: We have authority.

THE COURT: Or is that a separate conspiracy that will be embraced in the larger conspiracy that has been defined in the Traumonti case?

MR. MAC DONALD: We, I think, have strong authority in the Calasurdo decision, which is a Securities and Exchange Commission prosecution in this district. One of the purposes of a conspirator was to mislead the Securities and Exchange Commission so the distribution of securities could proceed unimpeded, and their proof was composed of false assertions and declarations before the Securities and Exchange Commission, and it was admitted as against all members of the conspiracy, not simply the declarant.

THE COURT: I will deny the motions of the defendant Schleger.

Give me the citation of Calasurdo. I am

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familiar with the case but I want to reread it again.

MR. CONCANNON: Mr. Vanasco should not have been here for the past two weeks and certainly should not be here after today. I respectfully request a judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure. There has been no showing of knowledge on Vanasco's part. There has been no showing of a willing participation in the conspiracy which, of course, most concerns both of us at the present time.

The government's theory, apparently, with respect to the rest of the counts is the Pinkerton idea.

The case should be dismissed against all the defendants because of the government's impropriety in listing the numerous people whom they name as co-conspirators who, by no stretch of the imagination, could have been considered to have done anything wrong in this case.

THE COURT: Is that a legal ground for dismissal, that the charge is broader than the proof?

MR. CONCANNON: I don't see that as precisely the problem, at least with respect to what I am addressing the Court about right now. I do see many conspiracies here, many possible conspiracies, but what I am concerned about right now --

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THE COURT: Has any defendant been prejudiced because the charge is broader than the proof?

MR. CONCANNON: Certainly, your Honor.

THE COURT: How?

MR. CONCANNON: By the way the government approached the case. Essentially, all the defendants on trial have been denied, to some extent, the right to confront witnesses. What has happened is by --

THE COURT: Confront what witnesses?

MR. CONCANNON: By naming the various people that they did as co-conspirators who, as I say, should not have been, essentially what the government has been able to do is get in their statements without calling those witnesses to the stand and, consequently, we have not been able, on the government's case, to attack the credibility of those witnesses as well as the statements that were made.

In addition, your Honor there is just insufficient non-hearsay testimony to keep Mr. Vanasco in this case any longer. No reasonable jury could prove beyond a reasonable doubt his participation in this conspiracy.

THE COURT: My recollection of the testimony with respect to Mr. Vanasco is to the contrary. The motion

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on his behalf is denied.

MR. ROONEY: Pursuant to Rule 29 we move for a dismissal because of the government's failure to make out a prima facie case, particularly to establish the defendant Bissett's knowledge of the objects of the conspiracy.

I would also point out that there is virtually no evidence whatsoever from any of the witnesses, even from any of the documents, to show that he certified a false statement of capital structure of Select or that the capital structure is, indeed, false.

THE COURT: What was that?

MR. ROONEY: Or that the capital structure of Select was, indeed, false.

THE COURT: Mr. Rooney, you have not been here for ten days, have you?

MR. ROONEY: There is no evidence to show that he knew of it.

THE COURT: That's a different point. I thought you were telling me that there is no evidence the capital structure of the statements was "incorrect" -- to put it euphemistically.

MR. ROONEY: Maybe I misstated it.

There is no evidence to establish Mr. Bissett's

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knowledge. He was never even question about this case by the Securities and Exchange Commission.

THE COURT: About this case?

MR. ROONEY: Yes, sir.

THE COURT: I don't understand that.

MR. ROONEY: In anticipation that he might have made some false statement to the Securities and Exchange Commission. That's not the issue.

THE COURT: The Securities and Exchange Commission didn't prosecute him?

MR. ROONEY: They never asked him questions about this case, which points out the fact that nobody ever thought he had any involvement in this case.

THE COURT: That seems to be a non sequitur.

Tell me about Mr. Bissett, Mr. MacDonald.

MR. MAC DONALD: Your Honor may recall the contracts which Mrs. Grube identified that her husband, her late husband, had executed. Those contracts were subject to a stipulation that they were all prepared from the same typewriter, and one of them bears the legal stationery of Bissett & Logar, and the invoice establishes the rendering of the service in the B. H. Grube matter during the period February 9 to March 13, 1970. Those contracts on their face evidence an intention to distribute

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securities if and when the securities market falls below the dictated price, so that under the terms the stock can be sold into the marketplace.

Those contracts, in addition, were backdated to January 3, 1970, and that act of backdating, we say, was in furtherance of the conspiratorial purpose of trying to support the balance sheet after the Securities and Exchange Commission began its investigation.

MR. ROONEY: Your Honor, if I may respond to that, there is no evidence whatsoever that these contracts were backdated. There is a notary seal on that contract saying it was signed by the two people who appeared before this notary on January 23. Moreover, while the documents we have stipulated were typed by the same typewriter, there is no evidence that this lawyer typed those contracts.

The evidence from Mr. Grube was that Mrs. Grube was in Reno on January 23. There is no tie-in whatsoever with this man Bissett and any backdating. That's contrary to the evidence.

THE COURT: I will reexamine the evidence tonight. I will rule on Mr. Bissett's situation tomorrow morning.

MR. BRODERICK: May it please the Court, I do

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move pursuant to Rule 29 --

Before I make that motion, I would like to make a motion on the statue of limitations. The indictment which has been consolidated here was filed April 4, 1975. I believe that that was outside the scope of the indictment as far as his participation, which ended sometime in late February or early March; therefore, I move to dismiss the indictment as to him under the statute of limitations.

THE COURT: Is there anything else?

MR. BRODERICK: I also move on the failure of establishing immunity for Michael Gardner in that he had testified against Mr. Segal in the Pioneer case and, in turn, Mr. Segal comes in and testified against him in the Select case. I think that has been proven here on the record.

I move for a dismissal of the indictment based on that point.

THE COURT: How does that give him immunity?

MR. BRODERICK: Based on Judge Lasker's opinion, if you turn witness to testify against somebody, and he convicts that person, and you take that person who is convicted and you have him testify against the person you gave immunity to, under that case there is no way the

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government can show that they got independent knowledge of the crime of the defendant from the initial prior immunity. That's exactly what happened here, and our case is on all fours with Judge Lasker's opinion based on that.

Segal did testify that after he was convicted in Pioneer, then he testified in the grand jury against Michael Gardner. It is obvious after he was convicted in Pioneer he comes in and testifies against Gardner, a case he had immunity on.

THE COURT: It seems to me, as far as the latter part of your argument is concerned, that strains what was before Judge Lasker, or what he decided.

What about this question of the statute of limitations?

MR. MAC DONALD: That was disposed of pretrial. The defendant signed a waiver in respect to the statute of limitations which, I believe, is part of the record in this case. His signature is authenticated and your Honor ruled pretrial. I thought you disposed of that pretrial, that it was effective and binding.

THE COURT: What do you say? Have you seen the waiver?

MR. BRODERICK: I have seen the waiver.

THE COURT: Does it waive the statute of

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limitations?

MR. BRODERICK: I don't know if he can waive the statute of limitations, to begin with.

THE COURT: You don't? No, you can't waive the statute of limitations?

MR. BRODERICK: I don't think you can.

THE COURT: The motions of the defendant Gardner are denied.

MR. BRODERICK: May I make my final motion on the failure of the government to establish a prima facie case thus warranting dismissal of the indictment. The testimony against Mr. Gardner concerning his involvement in the conspiracy must come from Alan Segal, an accomplice, which the Court is well aware of. Segal never testified that he had any conversation; that Gardner knew anything about the assets of this corporation; or that Gardner had any knowledge of the corporation or anything of value to the corporation. That was never mentioned and never testified to. He testified to the contrary. He testified that he thought it was a good corporation and it was not until February 20 or so that he found out that there was a Securities and Exchange investigation of it. He still never told Gardner or involved Gardner in any form or fashion to say there was a fraud on the

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public and, therefore, I say there is no case.

THE COURT: I don't have any doubt about the Gardner case. The motions are denied. I will ask the government to assist me to this extent: I have my own index of every point and place in the record where mention is made of the names Bissett and Knisely, whose motions I am considering overnight. If you have a comparable compilation so that I can audit my own, or have significant parts of the record that you want to call to my attention, you need not do any more than telephone my law clerk and give him the page numbers of the record. I will examine everything you call about, in addition to my own examination of the pages that I have marked out in the record.

In addition, if there are particular exhibits that have any bearing on the motions of those two defendants, let me know.

We have to dispose of this matter on Exhibit 353 raised by Mr. Broderick where he seeks to strike Gardner's name from that exhibit.

Do you have that exhibit before you so that we can deal with that?

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MR. ROONEY: May I make one comment, that I think will be helpful?

THE COURT: Has this to do with Gardner?

MR. ROONEY: No.

THE COURT: Where is that place, Mr. Broderick, that you are concerned about?

MR. BRODERICK: On the last page of the exhibit, your Honor. The second or third last page, your Honor, where it talked about Danenza-Gardner and the Foresite Fund.

THE COURT: Mr. Broderick calls to my attention the trade date March 5, 1970, buying customer or account, Foresite Fund, Government Exhibit 255, the buying broker Deutschman & Co., 300 shares at $13; the selling broker, Karen & Company, Government Exhibits 254 and 312 for a trading account at Karen & Company.

What is the connection with Gardner to that and also to the subsequent item of 500 shares giving the same information?

MR. MacDONALD: The transaction, your Honor, was a short sale later covered. The defendant Segal testified that on learning of the short sale, he as much accused Gardner of being the short seller through Victor Danenza, who ran the Foresite Fund, and he told Gardner

that Gardner would not be receiving the nominee certificates which he had previously told him were forthcoming.

THE COURT: What page of the record?

MR. MacDONALD: 190 through 192.

Following that advice, the Foresite Fund covered the short and Segal said, without objection, that he had been proven correct in his assumption that Gardner was the short seller through his --

MR. BRODERICK: Not that Gardner was; he didn't mention Gardner

THE COURT: Let me see the portion of the record.

MR. MacDONALD: The answer beginning on 191 and 192, somewhat out of context.

THE COURT: In the light of the testimony called to my attention by the Government, the motion to strike Gardner's name from Exhibit 353 is denied.

MR. BRODERICK: Your Honor, I accept. I never heard that testimony that we are referring to.

THE COURT: I commend it to your attention.

MR. BRODERICK: Well, I move to straighten out the record, then. I don't remember that type of testimony at all.

THE COURT: Do you want me to call the reporters to the stand to have them testify that they made an accurate

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record of what they heard?

MR. BRODERICK: I can show in the record where there was a mistake as to another point, where they used the word Karfunkel instead of Gardner.

THE COURT: That is a different point. It has nothing at all to do with the subject that we have now.

If I receive a certificate from the Southern District Court Reporters in respect of the reporter who took that testimony in the area of 190 to 192, I will deem the matter closed and, if there is no such certificate, I will reopen it.

I believe that that is all for tonight, gentlemen.

MR. EHRLICH: Your Honr, I neglected to renew my pretrial motions.

THE COURT: Your pretrial motions are deemed renewed and disposed of accordingly.

MR. SEGAL: For the record, may the objections that remain as to other individuals, besides the particular defendant, be deemed applicable to the defendants, to all defendants where appropriate?

THE COURT: Mr. Segal, your very attractive offer at this time ex post facto has to be considered with a hindsight view. I have made myself clear throughout

the record and I don't want now to vary what I have done throughout the record.

If what you say is consistent with what I indicated at the start of the trial, it is just repetitious. If it is not, it is rejected and, on either count, I think it is unnecessary.

MR. RHODES: Your Honor, when will we know what the Government is going ot offer in the various testimony of the SEC?

THE COURT: That is going to be attended to so that you can consider it over the weekend.

Is that correct, Mr. MacDonald?

MR. MacDONALD: I think, in Mr. Rhodes' case, Mr. Barnett's deposition is nearly in a state to be given to him.

Your Honor, I just received an indication that there may be some persons who believe that the order of the indictment does not dictate the order in which the defendants are going forward.

THE COURT: No. We are going to go forward in the same sequence as heretofore indicated throughout this trial and the defense may proceed tomorrow morning as soon as I am through with the sentences that come up ahead of this case and any other rulings that may be

necessary.

These exhibits have been received but not have been indicated as such for the record.

(Government's Exhibits 328, 333, 335, 336 and 340 were received in evidence.)

xx THE COURT: Government Exhibits 343, 344 and 345 remain marked for identification only.

(Court adjourned.)

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bs2 DEFENSE WITNESSES - Robert E. Ford

MR. SEGAL: Yes, your Honor.

THE COURT: Now, the Government has rested its case, which means that it has now produced all the evidence that it desires to offer at this stage of the case and the defendants will now proceed.

Mr. Segal, for Mr. Boyd.

MR. SEGAL: Your Honor, the defendant Boyd rests.

THE COURT: The defendant Goodloe, by Mr. Stokamer.

MR. STOKAMER: The defendant Goodloe rests, your Honor.

THE COURT: The defendant Ford, by Mr. Goldman.

MR. GOLDMAN: We are prepared to proceed now, your Honor.

I call Robert E. Ford.

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ROBERT E. FORD, a defendant, called as a witness in his own behalf, testified as follows:

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q Mr. Ford, you are a defendant in this matter, are you not, sir?

A Yes, sir.

Q Will you tell the jury your address, please?

A I live in Abilene, Texas at 1349 Sylvan Street.

Q That's your home address?

A Yes, sir.

Q What is your office address, sir?

A My office address is North Fourth and Beech in Abilene.

Q Are you married, sir?

A Yes, sir.

Q How long have you been married?

A 20 years coming up.

Q Do you have any children?

A Two children.

Q How old are they, sir?

A I have one daughter 18 years of age and one 16, going to be 17, and I have a son by a prior marriage before this last marriage.

Q What is your occupation, sir?

A I am an attorney.

Q Are you admitted to the bar?

A Yes, sir.

Q Of what state, sir?

A Texas.

Q How long have you been an attorney?

A 26-1/2 years.

Q What type of law do you practice?

A Well, I am a small town lawyer but I practice trial work and real estate and land transactions.

Q Will you tell us about your education, sir? Will you tell us where you went to high school, college, law school?

A Yes. I went to Abilene High School, having graduated from there in the spring of 1940. Then I went to one semester in Hardin-Simmons University in Abilene and, before World War II started, I was at the University of Texas and, after World War II concluded, I went back there and took an LLB degree at the University of Texas in law.

Q Were you in the Service during the war?

A Yes, sir.

Q Did you receive an honorable discharge?

A Yes, sir.

Q Have you ever been convicted of a crime?

A No, sir.

Q Were you ever an officer of Select Enterprises?

A No, sir.

Q Were you ever a member of the board of directors?

A No, sir.

Q Were you ever general counsel to that firm?

A No, sir.

Q In the course of the year 1970, did you do some work in connection with Select?

A Yes, sir, I did.

Q Can you tell the jury when You first heard of Select and who told you about it?

A Well, it was in -- on or about January 15. Mr. Goodloe approached me and wanted me to go to Midland with him to talk with Mr. Joe Boyd with reference to a pending trade that they had.

Q Had you known Mr. Goodloe before?

A Yes, sir.

Q What was the relationship?

A I first met him in 1952, I believe, and then I met him again and did some work for him in 1954 and I didn't see him again, then, until 1961, I believe, and in '62 I did some work for him and then, right after 1962, I didn't see him for seven years and then he came back and visited with me and talked with me in the latter part of August or the first part of September of 1970.

Q After your conversation with Mr. Goodloe, did you go anywhere?

A To Midland, Texas.

Q Whom did you go with and who did you meet there?

A We went to Mr. Boyd's home in Midland, Texas.

Q By "we", who do you mean?

A Mr. Goodloe and I.

Q Did you have any conversation there?

A Yes, sir.

Q With whom?

A With Mr. Goodloe and Mr. Boyd and Mr. Weber.

Q What was the gist of that conversation?

A The gist of the conversation concerned the sale of properties to Select Enterprises that Mr. Goodloe owned. He owned -- that first meeting dealt with, I think, primarily oil and gas leases in Comanche County, Texas.

Q Subsequent to that meeting, did you draw up any documents?

A Yes, sir.

Q You have before you, sir, Government Exhibit 36. Is that a document that you drew up subsequent to that meeting?

A Yes, sir.

A What is that document?

A This is a conveyance of oil and gas leases in Comanche County, Texas, to Select Enterprises, Incorporated.

Q Did you draw that up?

A Yes, sir.

Q At whose request?

A Ed Goodloe.

Q Did he sign it?

A Yes, sir.

Q What did you do after you drew that up and he signed it?

A Well, I handed it to him along with another assignment that I did on the same day and that was -- I believe, Mr. Goldman, that this may have been drawn the day before, but I know that it was early that morning that he signed it and we had handed it to him and he left Abilene and went to Midland.

Q You said there was another document that you also drew up that day?

A Yes, sir.

Q Is that Government Exhibit 33?

A Yes, sir.

Q Can you tell the jury what that is?

A This is an assignment of mining claims in the State of New Mexico. They are known as the Cribbenville group of mines.

Q And that assignment is by whom to whom?

A This is an assignment from C. A. Morris & Company,

Incorporated, to Select Enterprises, and it's signed by Ed Goodloe.

Q What was Mr. Goodloe's relationship to C. A. Morris?

A Well, at this time he was the president and owned most of the stock or -- well, I don't know. I don't know of any other stockholders at that time.

Q Is a series of papers.

Did you attach those to the assignment?

A No, sir.

Q Do you know when that was attached?

A No, sir.

Q You said you gave these to Mr. Goodloe and what did he tell you he was going to do with them?

A He said that he was going to attend a board meeting in Midland, Texas, and deliver the assignments to Select Enterprises.

Q Now, sir, before you is also a document, Government Exhibit 35. That is a contract between Mr. Goodloe and Select, is it not?

A Yes, sir.

Q Did you have any hand in the drawing of that document?

A No, sir.

Q When was the next time you spoke to Mr. Goodloe about anything dealing with these documents, 33 and 34?

A The next time I talked with Ed Goodloe about this matyer?

Q Yes, sir.

A It was on the, I believe, on the 25th, the 26 -- it was the 26th. Just a few days later.

Q Did he ask you to do anything?

A Yes, sir.

Q What did he ask you to do and what did you do?

A He asked me to render title opinions on these two properties that had been conveyed to Select.

Q Did you in fact render title opinions?

A Yes, sir.

Q When did you do that, sir?

A The 26th.

Q Do you recall what day of the week that was, by the way?

A I'm sorry. I ddon't remember. It may have been a Wednesday, but I am not sure.

Q Do you have before you Government Exibits 34 and 37?

Would you look first at 34 and tell the jury what that is.

A Exhibit 34 is my title opinion dealing with the Cribbenville group of mines in the State of New Mexico.

Q There is attached to that exhibit, is there not, a series of papers.

Did you attach those papers to that exhibit?

A Yes, sir.

Q All of them, sir?

A I think I just attached the report of George Harris.

Q That would be the first ten pages of the attachments, is it not?

A Yes, sir.

Q I'm sorry. It is 11 pages.

You also have before you Government Exhibit 37. Would you tell the jury what that is, please?

A This is the title opinion which I rendered to Select Enterprises on January 26, 1970, covering the oil and gas leases in Comanche County, Texas.

Q There also are some attachments to that.

Can you look through it and tell the jury whether or not you attached those documents to your opinion.

A No, I didn't attach anything to this opinion that I recall.

Q You have before you two tissue thin documents.

I believe they are the two on top of Defendant Ford's Exhibit E, which is a green tissue thin document.

Can you tell the jury what that document is, please?

A This is a copy of my opinion directed to Select, January 26, covering the Cribbenville group of mines in the State of New Mexico.

Q Is that identical to Government Exhibit 34?

A Yes, sir, it is.

Q I show you Defendant Ford's Exhibit F and ask you to look at that document and can you tell the jury what that is, please?

A This is a title opinion that I rendered to Select Enterprises, covering the oil and gas leases in Comanche County, Texas, on January 26, 1970.

Q Is that identical to the document you identified as Government Exhibit 37?

A Yes, sir.

Q Directing your attention to the fifth page of that document, the third line of typing -- where did you find this document and the previous document, Defendant Ford's Exhibit E?

A I found them in some files in my office left there by Ed Goodloe. They were in a box back in the back of the

building where he used to have his office. They were not found in my office, per se, but back in a storage area in the back of my building.

MR. GOLDMAN: I offer the two exhibits, Defendant Ford's Exhibits E and F.

MR. MacDONALD: No objection.

MR. STOKAMER: May I see them, please?

(Court's Exhibit 31 marked.)

MR. STOKAMER: No objection.

(Defendant Ford's Exhibits Exhibits E and F were received in evidence.)

Q Referring you to Exhibit F on the fifth page of that document, again, the third line, is there anything that hits your eye there? The third line of the fifth page.

A Yes, sir, I have it.

Q Can you describe what that line says? Would you read just that line and the line above it?

A "The ownership of the above described oil and gas leases is as follows:

"Select Enterprises, Incorporated, to wit:"

Q Now, that Select Enterprises, is apparently typed in?

A Yes.

Q Is that a carbon letter?

A Yes.

Q So that Select was apparently added to that carbon at some time?

A Yes, sir. That's true.

Q Do you recall the circumstances concerning that?

A Yes, sir. When the opinion was brought to me for my signature, Select Enterprises had been left out and I had her type it in there rather than --

Q By "her" you mean your secretary?

A Yes. Now, the opinion of course is directed to Select Enterprises and the provisions of the opinion talk about Select Enterprises and the requirement number one I made in the opinion refers to Select Enterprises.

Q Is there any difference in that opinion whether or not that Select Enterprises was typed in?

A None whatsoever.

Q Now, sir, what date were these opinions drawn up?

A January 26, 1970.

Q Is that the date on the documents?

A Yes, sir.

Q Were they backdated?

A No, sir.

Q These opinions were drawn up for whom, sir?

A Select.

Q In particular, sir, in No. 37 with respect to the requirements, did you suggest that anything be done, No. 1, by Select?

A Yes, sir. That they record the assignment from E. D. Goodloe to Select Enterprises.

Q Where would that be recorded?

A Comanche County, Texas.

Q How far away is that from Abilene?

A About 130 miles southeast.

Q These are commonly called opinion letters, are they not?

A Yes, sir.

Q What is the purpose of a lawyer's opinion letter as you understand it?

A The purpose of the opinion letter is for the attorney to express an opinion as to who owns the property, to whomever it's directed.

Q Does an opinion letter have anything to do with the valuation of the property?

A No, sir.

Q Does it have anything to do with the appraisal?

A No, sir.

Q Does it have anything to do with a geological estimate of its worth?

A No, sir.

Q You are not an accountant or a geologist, are you, sir?

A No, sir.

Q Let me ask you, you have before you document 169. Did you also draw that up on the 23rd of January?

A You are speaking of 69?

Q 169, I believe.

A Yes, I did.

Q Did you also draw that up on the 23rd?

A Yes, sir.

Q At whose behest was that?

A Ed Goodloe.

Q Now, sir, concerning California land, did you ever do any work on behalf of Select Enterprises?

A Yes, sir.

Q When did you first have a discussion with anyone concerning Select's acquisition of California land?

A I think it was February 17, 1970.

Q With whom was that discussion?

A That was Ed Goodloe and W. L. Brinlee and Joan Vinson.

Q What was that discussion, if you recall?

A Well, they wanted me to draw a contract between them, between them and Select Enterprises.

Q Where was that discussion held?

A I believe that it was held in the office of American Education Society. It was an office that was being rented in the back part of my building by Ed Goodloe.

Q By the way, when you say your building, did you own that building?

A No. I do not own it but it's family property; belongs to my father.

Q Did Mr. Goodloe or the American Education Society rent space?

A Yes, sir.

Q Directing your attention to Exhibit 69, Government exhibit in evidence, is that a contract dealing with certain mineral concentrates?

A Yes, sir.

Q Did you draw up that contract?

A Yes, sir.

Q Did you notarize it?

A No, sir. I don't believe I did.

Yes, I did. The same day I notarized the signature of Brinlee and Mrs. Vinson I did it.

Q By the way, is that contract signed by them?

A Yes, sir.

Q Is it signed by Select?

A No, sir.

Q Will you look at Exhibit A to that document. Did you attach that exhibit to that document?

A No, sir.

Q By the way, on that page that says Exhibit A, where it says Exhibit A is that your handwriting?

A No, sir.

Q Do you recognize that handwriting?

A No, sir.

Q Did there come a subsequent time when you had some discussions involving Mr. Brinlee and Mrs. Vinson and Mr. Goodloe with respect to California land?

A Yes. That was on March 2 of 1970.

Q Where was that, sir?

A In Abilene, Texas.

Q In whose office?

A It was my office.

Q What was the substance of that conversation?

A The substance of the conversation was the conveyance of land which Mr Brinlee owned in California to Select Enterprises and the conveyance by Mr. Brinlee to --

of land to Ed Goodloe.

Q When you say --

A And the conversation dealt with Mr. Brinlee's executing a warranty deed conveying the land.

Q What was your view as to whether he should execute a warranty deed?

A Well, he said he owned it and that guarantees and warrants the title.

Q What does a warranty deed mean?

A It means that the person that owns the land guarantees and warrants that he has the ownership of the land.

Q What if it turns out he doesn't have ownership of the land?

A Well, he is subject to suit because it would be a suit that lawyers normally refer to as breach of warranty. He said he owned something and he didn't and he would be liable for warranting something that didn't really exist.

Q In short, might it be considered a guarantee?

A Yes, that is what it is.

Q When you compare that to a quitclaim deed, what does that mean?

A A quitclaim deed conveys all the right, title and interest, whatever it might be, of the grantor to the

grantee -- the person who is taking in the change of title.

Q What if it turns out that the grantor, the person who delivers a quitclaim deed, does not have legal right to tht property?

A There wouldn't be any cause of action against him whatsoever.

Q The buyer, in effect, is estopped?

A True.

Q You said Mr. Brinlee was talking about land he owned.

You mean Mr. Brinlee and Mrs. Vinson?

A Yes. It was W. L. Hoyt Brinlee and Joan Vinson, doing business as Vinson Investment Company and Desert, I believe, Investment Company.

Q You see before you Government Exhibit 132 and 140. Did you draw up those deeds, sir?

A Yes, sir.

Q Were they signed in your presence, if you recall?

A Yes, sir.

Q They deeded the Select certain portions of Imperial County and Riverside County, is that correct?

A Yes, sir.

Q Those are both warranty deeds, are they not?

A Yes, sir.

Q Can you tell us what the understanding was with respect to securing title policy for those lands represented by deeds 132 and 140?

A Yes, sir. Mr. Brinlee said there wasn't any.

But what they owned the property and they wanted to convey the property and, so the agreement was entered into whereby he would execute warranty deeds of this property to Select Enterprises and that stock would be issued for the delivery of these deeds to Select for this property.

Q When was the stock --

A But the stock would not be delivered to him until Mr. Brinlee furnished title policies showing ownership of the properties in Select Enterprises.

Q I show you Defendant Ford's Exhibit A in evidence.

Do you recognize that letter, sir?

A Yes, sir.

Q Did you draw it up?

A Yes, sir.

Q Who is that letter signed by?

A Signed by W. L. Brinlee and Joan W. Vinson.

Q Does that letter basically spell out the agreement that you have just mentioned?

A Exactly.

Q What is title policy, by the way?

A Well, title policy is an instrument usually issued by a title policy company. They are organized and established under the laws where they do business and they have -- they guarantee to the purchaser of the land that the title that he has received from the granto of the land to him is good title.

Usually there is affixed to the title policy a certain consideration that in the event of failure of title, the company would be liable to the owner of he title policy for that, up to that amount of money.

There is a lot of fine print, lots of terms and conditions normally in a title policy but those deal with the company's liability in case something goes wrong with the title.

Q Let me ask you just one technical question. When a deed is made out, does it take effect?

A No, sir.

Q When does a deed take effect?

A It takes effect Upon delivery to the person that it is deeded to.

Q In other words, if I draw up a deed to you of all your property, if I keep it in my pocket, I still own

that property, is that correct?

A That's correct.

Of course, there could be constructive delivery by placing it in a record or something like this, I don't know. But the title doesn't pass until the deed has been delivered.

Q You see before you Exhibits 138 and 147. When did you first see those documents? When did you see 138?

First, do you have that in front of you?

A Yes, sir.

Q When did you first see that?

A March 2.

Q Where did you get it?

A From Mr. Brinlee.

Q Did he give that to you?

A Yes, sir.

Q That is a deed, is it not?

A Yes, si.

Q Is it a quitclaim deed from Ace Associates to W. L. Brinlee and Vinson Investment Company?

A Yes, sir.

Q That's for Riverside, California, is it not?

A Yes, sir.

Q Would you look at 147?

A Yes, sir.

Q Is that a deed from Ace to W. L. Brinlee and Vinson on Imperial Valley land?

A Yes, sir.

Q When did you see the latter deed, 147?

A The same day, I believe, March 2, 1970.

Q Was there anything improper with those deeds?

A Yes, sir.

Q What was it?

A Well, the acknowledgment on the quitclaim deeds was not a corporate acknowledgment and, yet, the property was being conveyed from a corporation to the Brinlees.

Q What kind of an acknowledgment was it?

A It was Just an individual acknowledgment.

Q What is the difference between an individual acknowledgment and a corporate acknowledgment?

A An individual acknowledgment says before me on this day personally appeared the individual who acknowledged to me that he executed the instrument for the purposes therein expressed.

A corporate acknowledgment says appeared this person who is an officer or director of the corporation and acknowledges that he executed the instrument for the

purposes and consideration therein expressed and in the capacity therein stated.

Q Would the presence of an individual acknowledgment rather than a corporate acknowledgment on a conveyance from a corporation prevent it, you feel, from being recorded?

A Yes, sir.

Q Did you have any discussion with Mr. Brinlee and Mrs. Vinson and Mr. Goodloe concerning that defect?

A Yes, sir.

Q What was that discussion?

A I said to them, this is -- this acknowledgment is bad and improper because it is a corporation conveying property and it's an individual acknowledgment. The corporation, the person signing the paper on behalf of the corporation didn't acknowledge it as a an officer or a director of that corporation.

Q What did they say to do or what did you suggest?

A They said, well, you know, to get it corrected and asked me to record it for them.

Q Do you know whether or not they had them recorded at that time?

A They had not been recorded at that time.

Q That same day did you draw up any other deeds?

A Yes, sir.

Q Directing your attention to Exhibits 156 and 157 before you, 156 is the deed of two sections and 157 is the deed of nine sections of land.

A Yes, I have that.

Q Did you have any discussion about those deeds to that property?

A Yes.

Q What was that discussion and with whom was it?

A This is a little bit later. Vinson -- It was the same day but a little bit later in the day. But Vinson and -- Joan Vinson and Ed Brinlee and Ed Goodloe made a trade concerning those properties.

Q Who told you they made a trade?

A Brinlee and Goodloe and Miss Vinson.

Q What was that trade you were told?

A Ed Goodloe traded him 60,000 shares of restricted stock for eleven sections of land.

Q Two of those sections went to you?

A Yes, sir.

Q What was that for?

A Legal services.

Q For who?

A Ed Goodloe.

Q How long have you represented him since you saw him again in 1969?

A Well, I'm saying it was really late in August, perhaps in early September of 1969.

Q What kind of work did you do on his behalf?

A He asked me to try to secure the transfer of certain stock in United American Industries, and there were some -- The company had refused to transfer the stock on their books, and he asked me to go with him to Tucson, Arizona, the headquarters of that company, to see if I could talk him into transferring the stock certificate. That was the beginning.

Q You did some other work on his behalf, by the way?

MR. STOKAMER: Objection.

THE COURT: I will sustain the objection.

I think we will take our recess now.

(Recess)

(Jury in box)

BY MR. GOLDMAN:

Q Mr. Ford, after March 2, between March 2 and March 26, did you do any work for Select?

A Between March 2 and March 22? No. I don't recall any. There may have been telephone calls or something. I don't recall any.

Q On March 26 did you attend a board of directors meeting of Select?

A Yes, sir.

Q You were not a member of the board, were you?

A No, sir.

Q Where was this meeting?

A At my conference room in my office in Abilene, Texas.

Q Can you give us a physical description of the Ford Building?

A It is a rather small one-story building. It was formerly a bus station that my family reconverted into a small office building.

There is an opening into the office building on North 4th Street and a reception area. Just to the right of that there is a library, rather small, and then there is a reception area, and right behind the secretarial office there is a rather large office, and that is my office, and just north of that office there is

a conference room. Just north of that there is an open area that has an opening onto Beech Street. That would be the opening to the office building from Beech Street, and beyond that there is a utility room, men's room, and a storage area, and a ladies' rest room.

Q How many offices are there in the building?

A There are seven offices.

Q You said before that Mr. Goodloe had an office in the back of the building.

A Yes, sir.

Q When did he take over that?

A He moved down there between Christmas and New Year's, or maybe just, perhaps, a few days later, 1969 to 1970.

Q By the way, did he have the same telephone number that you had?

A No. His telephone number was on my rotary but the number that people would call for him was 673-1421. That was the third line, I believe, on my rotary.

Q Did his telephone in his office also have the same numbers that you used?

A Yes, sir.

Q Now, sir, on March 26 you said you attended a

board meeting?

A Yes.

Q When prior to the 26th did you have any discussions with anybody concerning setting up that board meeting and the use of your conference room?

A Mr. Goldman, I don't remember whether it was the day before or two days before, or maybe even three days before that I was called. I am thinking now it was the day before that I was called and asked if they could hold a meeting in my conference room.

Q Do you remember who called you?

A Yes, sir.

Q Who was it?

A Mr. Boyd.

Q Did he give you any reason why he wanted to use your conference room?

A Yes.

Q Why was that?

A They has an office -- Select had an office in Dallas at that time and they also had one in Midland, and they were going -- some of their directors were coming from the Dallas - Fort Worth area and some from Midland. Abilene is right in the middle of the two towns. It is about 190 miles west of Dallas and Fort Worth --

that's Abilene. About 160 miles west of Abilene is Midland.

Q For that reason he wanted to use your premises in Abilene?

A Yes, and for another reason: Mr. Barnett lived in Abilene and he was not a member of the board of directors but they intended to work with him.

Q Did you attend this board of directors meeting?

A Yes, sir.

Q Were you there the whole time?

A Oh, no.

Q Do you recall about when it started?

A I think it started about 2:30.

Q In the afternoon?

A Yes, sir.

Q Who chaired the meeting?

A Mr. Boyd.

Q Do you recall who else was present?

A Dr. Knisely, Dr. Chapel, Hanson, Ed Goodloe -- I believe those were the ones that were there, still there before I left.

Q What time did you leave?

A I left approximately 4:30 or 5:00 in the afternoon. I think my best recollection is that it was

5:00.

Q Was the meeting still going on?

A Yes, sir.

Q Why did you leave at that time?

A Well, I had to get home and go to a rehearsal for a musical being done with the Abilene Symphony called "Me."

Q Did you have a role in that?

A Yes.

Q What role?

A Uncle Jeff.

Q Between 2:30 and the time you left, at 5:00, how long were you at the meeting?

A It is difficult to recall now, you know, these many years later, but I would assume that I was there for an hour, maybe for an hour and a half.

Q Did you have anything else going on in your office at that time?

A Yes, sir.

Q What was that?

A Well, I had clients in my office and I had business to transact.

Q By the way, was your secretary present at that meeting?

A No, sir.

Q Do you recall whether there was a secretary?

A No, sir.

Q By "secretary," I mean somebody taking stenographic or otherwise notes.

A I understand that they hired a public stenographer, and I don't believe that she had arrived. I'm not sure about this. Right now I don't remember, but I think she arrived later.

THE COURT: Have you got the minutes of that meeting?

THE WITNESS: Yes, sir.

THE COURT: The public stenographer's minutes?

THE WITNESS: No, sir.

Q What do you mean by "public stenographer"?

A A public stenographer is a person who is hired who holds themselves out to do stenographic work for the public.

Q Do you mean like a court reporter?

A Yes, sir.

Q Sir, do you recall what you said at that meeting, if anything?

A I don't recall.

Q Do you recall what topic you spoke about, if

A I think the board probably asked me some questions about Brinlee and the contract with Brinlee, but I'm not sure.

Q Do you recall what anyone else said?

A I'm sorry, Mr. Goldman, but I can't. I don't recall.

Q Sir, before you is Government Exhibit 9 which concludes the minutes of March 26. Do you have that document?

A (Pause)

Q I show you Government Exhibit 9-A for identification.

A Yes, sir?

Q Looking at that document, do you recall whether or not you drew up the minutes for the board of directors for March 26?

A Before March 26?

Q For the board meeting of March 26. Did you draw up the minutes?

A No, sir.

Q Do you recall whether or not you helped in drawing up or preparing minutes for that meeting?

A No, sir. I don't have any recollection of that.

Q You said you might have, I believe, asked some

questions about California land dealings with Mr. Brinlee --

THE COURT: Did you say that Exhibit 9-A is the meeting of March 26?

MR. GOLDMAN: It is towards the end, your Honor.

THE COURT: Yes, I have it.

Q You said that you may have discussed with the board the California land transaction with Mr. Brinlee and Mrs. Vinson. Did you ever make a written opinion on that land?

A No, sir.

Q On or about March 26, did you do any work on a balance sheet for Select Enterprises?

A No, sir.

Q Did you see any work being done on a balance sheet for Select?

A No, sir.

Now, I hesitated there for a moment but I just, I know that about the time I left, that across the hall from where the board meeting was being held Mr. Barnett was working on some documents that had been presented to him.

Q Did you give Mr. Barnett any documents, by the way?

A Probably copies of my title opinion were handed to him by my secretary, covering the oil and gas properties in Comanche County and also the mining claims in the State of New Mexico.

Q Did you give him any appraisals or evaluations?

A No, sir.

Q Mr. Barnett about that time was a friend of yours, was he not?

A Yes, sir.

Q Do you recall how he came to work for Select?

A Yes, sir. He was preparing my income tax and, while he was working in my office with respect to

preparing my income tax form, he met Mr. Goodloe and Mr. Goodloe hired him to do some work for him.

I think Mr. Goodloe introduced him to Mr. Boyd.

Q Now, sir, did there come a time in early April when on behalf of Select Enterprises you went on a trip?

A Yes, sir.

Q Where did you go, sir?

A The first trip I made was, I believe, on April the -- I believe it was April 8th that I received a telephone call from Mr. Boyd and he asked me to meet him in Fort Worth and to attend an SEC hearing there.

Q I will get to that, if I may, in a minute.

Did you have an opportunity to go on a plane trip?

A Yes, sir.

Q Where was that, sir?

A I believe it was a Monday morning, April 13, that I went to California.

Q Where did you go and what did you do in California?

A Went to Los Angeles and when I was there at the airport in Los Angeles, I met Mr. Williams.

Q Who was Mr. Williams?

A He was the notary who had notarized th deed

from Ace Associates to Brinlee and Vinson, d/b/a Vinson Investment Company.

Q What does d/b/a mean, by the way?

A Doing business as.

Q Would that be deed or deeds?

A Deeds.

Q Would you look at 138 and 147?

A I had deeds with me but I met Mr. Williams, I think, with respect to the one deed.

Did you say 138?

Q 138 and 147. Perhaps I can save time and show you.

Do you have them, now?

A Yes, sir.

Q Are those the deeds you saw Mr. Williams about?

A Yes, sir.

Q What did Mr. Williams do?

A Well, I had attached a corporate acknowledgment to these deeds and he signed it.

Q Did you meet anyone else in California?

A Yes. Approximately 30, 40 minutes later, I can't recall now, but it wasn't very long, Mr. Robert Earl Harvey picked me up there at the airport.

Q Had that been prearranged?

A Yes, sir.

Q Where did you go with Mr. Harvey, if anywhere?

A Well, we went to Riverside, California.

Q How far is that from Los Angeles?

A I don't know.

Q Do you have any idea how long it was?

A It's not very far.

Q What did you do in Riverside?

A I recorded these deeds.

Q Where was that?

A At the Recorder's Office in Riverside.

Q Is Riverside the county seat of that county?

A Yes, sir.

Q Did you do any record search while you were there?

A No. I asked if they co uld give me, if they had a direct and reverse index.

Q A what?

A A direct index and a reverse index.

Q What are those?

A Well, the direct index is generally an index of instruments filed of record from the grantor to the grantee and it would be a direct, would be something direct from one person to another.

The reverse index would be the index of the recipient of whatever the instrument conveyed.

Q Do they have those commonly in Texas?

A Yes, sir.

Q When you asked at the Recorder's Office whether they had such indices, what did they tell you?

A They didn't know what I was talking about.

Q Did you have an opportunity to check any deed records while you were there?

A No, sir. I asked questions but I didn't have an opportunity to check any records.

THE COURT: What did they have?

THE WITNESS: I don't know, Judge. They didn't have the system they had in Texas and it seemed to be a rather complicated procedure there and I don't know what they had.

THE COURT: Did you ask them for what was the equivalent of the language that you used, the direct and the reverse indices? Different language in different places, perhaps?

THE WITNESS: No, sir.

Q Did you go anywhere else while you were in California?

A Yes, sir. We went from Riverside down to

Desert Center.

Q Where is Desert Center?

A It's due west of Riverside. I think it's on Interstate 10.

Q What is Desert Center? What kind of town is it?

A It's just a small desert-like town. At that time there had recently been a community developed there by Kaiser, so I was told.

Q What did you do in Desert Center?

A We stopped there and drove through the Kaiser Development and then we drove out to an area where part of the sections of land were supposed to be located.

Q Desert Center is in what county? Do you recall?

A Riverside County.

Q Who were you with at this time?

A Robert Earl Harvey and his nephew, I think, Bill Wright.

Q Do you recall who was driving?

A Bill Wright.

Q Did you have any conversation with them that day?

A Yes, sir. I was mainly listening. I was taking notes on what they told me and particularly what

Mr. Harvey was telling me.

Q Do you recall what he told you?

A Yes. He told me that he had been the -- a sheriff or a deputy sheriff in Blythe, California, in the early '30s.

Do you want me to go ahead with this?

Q Please.

A All right.

That he had purchased land from a Perez, heir of the Perez land grant, and he told me that over a period of years he had been purchasing this land from the Perez land grant heirs.

Q Was this land that made Up the conveyance from Ace Associates to Brinlee?

A That's what he told me, yes, sir.

Q Do you recall what his association was with either Brinlee or Vinson or Ace Associates?

A I don't know that.

Q You said you saw some of the Riverside County land, is that correct?

A Yes, sir.

Q How did you see it?

A Well, Mr. Harvey stopped his car and pointed to it and told me "This is the land".

Q What kind of land was it?

A Tabletop flat, sandy loam type soil, it looked like to me. I didn't take a test of the soil but it looked like a kind of sandy loam.

Q Was it irrigated?

A No, sir.

Q Did you, in Riverside County, have an opportunity to visit any irrigated land?

A Yes, sir. We stopped in Desert Center or close thereto at a Farmer Brown's place and he had a well there that he was demonstrating to me. It was a well that would be something like 4500 gallons a minute and the water came out of the ground at 170 degrees Fahrenheit and had to go into a cooling basin before it could be put out to the trees and the other, or where it would be used for other purposes.

2 Q How long were you in California?

A Well, I got there about 9.30 in the morning on April 13. That night, I spent the night at the Ramada Inn at Desert Center and the next morning, early, we went through the sand dunes to El Centro, California. We shopped there a short time and then went up in San Diego and up Highway 101 and back to the Los Angeles airport. I am assuming -- this is my best recollection, now, from

the records I have been able to find, that I got there about somewhere near 7 o'clock, just in time to catch a plane for Dallas, Texas; arrived in Dallas, Texas at 2.20 a.m. Wednesday morning.

Q What did you do in El Centro, if anything?

A What did I do in Los Angeles?

Q El Centro.

A Well, I recorded the deeds in El Centro for Select.

Q Are those the deeds that have been made out to Select from Brinlee and Vinson?

A Yes, sir.

Q Did you also record the deeds from Ace Associates to Brinlee and Vinson?

A Yes, sir.

Q Did you also record the deds to yourself and to Mr. Goodloe?

A In Riverside.

Q Did you have an opportunity to see the Imperial County land?

A I saw the land which Mr. Harvey pointed out to me, yes, sir.

Q How would you describe that?

A Desert land.

Q By the way, sir, did you ever give a title opinion on this land?

A No, sir.

Q You are not admitted in California?

A No, sir.

Q Have you ever done any land searches in California?

A No, sir.

Q Have you an idea of how large the total amount of land of the two deeds, perhaps in square miles or any way you can --

A Well, of course, I had reviewed the deeds and did review them and there was a number of sections of land just east of Desert Center, some of it lying on the south side of the road and most of it, I think, and then there was some on the north side of the road.

Q The question was, if you can estimawte how many square miles in total amount of land that was conveyed by those two deeds.

A West of the road I believe there was a couple of townships. That would be, I think, six miles in each. Probabl 12 miles by perhaps 12 miles. 36 sections in a township, I believe, if I am not mistaken.

Q Now, sir, did there come a time when you repre-

sented Select Enterprises at an SEC hearing?

A Yes, sir.

Q When were you first contacted with a view to representing Select at that hearing?

A I believe it was April 8 or 9. I can be sure if you give me a moment to look.

I was contacted on April 8 and I went into a hearing on April 9.

Q With whom were you at that time?

A Dr. Boyd.

Q Where was that hearing?

A It was not a hearing, Mr. Goldman. It was an informal talk session by and between Mr. Boyd and Dick Hewitt, representing the Securities and Exchange Commission.

THE COURT: Was somebody sitting there taking stenographic notes?

THE WITNESS: No, sir.

Q Did there come a time when you again appeared at the SEC with Mr. Boyd?

A Yes.

Q When was that, sir?

A April 17.

Q Do you recall about what time you got to the SEC that day?

A Yes. I have a very clear memory of that because the hearing was to have commenced at 9 o"clock in the morning and I missed my plane connection and I called in and talked with Mr. Hewitt and apologized to him --

THE COURT: The only question he asked was what time it was.

THE WITNESS: I'm sorry.

THE COURT: What time was it?

Q What time did you appear?

A I appeared at 2.20 p.m. in the afternoon.

Q By the way, is your recollection refreshed from certain minutes on that precise time?

A Yes, sir.

Q Had Mr. Boyd been testifying prior to the time you appeared?

A Would you repeat the question?

Q Had Dr. Boyd been testifying prior --

A He had been testifying from, I assume, from the minutes, the SEC minutes, the minutes I read, from 9 o'clock until the noon break and then commenced at 1 o'clock and he was testifying at 2.20 when I came in.

Q During the course of that afternoon, did you have any discussion with Mr. Hewitt of the SEC?

A Yes, sir.

Q Who was Mr. Hewitt, by the way?

A He was, I assume -- he was a regional director or attorney for the SEC in Fort Worth.

Q What was your discussion with him about?

A About the fact that I had been relieved of any further duties and responsibilities of representing Mr. Boyd at SEC hearings.

Q What time? When did that occur, about what time?

A The hearing ended about 5 o'clock. Maybe a little bit after 5 o'clock, and we went downstairs.

Q Prior to that time, Mr. Ford, during the course of the questioning of Dr. Boyd, was there any discussion between you and Mr. Hewitt?

A Yes, sir.

Q What was the topic of the discussion?

A California land.

Q What did he ask you and what did You tell him?

A Well, he had stated that on April -- March 8 or March 9, that they had had a hearing --

MR. SEGAL: Objection.

THE WITNESS: (Continuing) They had had a hearing --

THE COURT: Wait a minute. Just a minute.

MR. GOLDMAN: The conversation with Mr. Ford and Mr. Hewitt, your Honor.

MR. MacDONALD: In whose presence?

THE COURT: Would you send up a note as to what your standing is to object to it?

MR. SEGAL: Your Honor, hearsay would be my basis.

THE COURT: Reporting on a conversation he personally had?

MR. SEGAL: He is reporting on a conversation with Mr. Hewitt out of the hearing of other individuals here.

MR. GOLDMAN: I will correct that, I believe, your Honor.

Q You we4e not with Mr. Boyd at an earlier time before the SEC, were you, sir?

A No, sir.

Q Can you tell us, without reference to anything that happened at an earlier time, just what happened on the one 17th in the conversation between Mr. Hewitt and yourself?

A I had, as I recall, two or three conversations with him throughout the hearing and then one conversation with him after the hearing had been concluded.

Q What happened during the course of the hearing?

A We discussed the California land situation and he was handed a copy of the Brinlee-Vinson agreement and furnished Select title policies.

That's about all I can recall right now.

Q Do you recall whether there were any discussions about whether there was a chain of title on that land?

A Yes, sir. That's in the hearing minutes itself. We discussed the matter backwards and forwards.

Q That Brinlee-Vinson policy, is that Defendant's Ford Exhibit A? Is that the agreement that was signed by Mr. Brinlee and Mrs. Vinson on March 2?

A I haven't fo und it, but that is the date that they signed the letter agreement with Select.

Q Was that given to Mr. Hewitt in a conversation that was on the record, do you recall?

A Yes, sir. I don't know whether -- I think it was on the record; that is the best of my recollection.

Q Sir, do you recall whether there was any discussion as to whether there was a chain of title going to Select?

A Yes, sir.

Q What did you say?

A Mr. Hewitt asked me if there was a chain of title and I said, "Yes. We have a chain of title on this. It is supposed to come from a Spanish land grant, and I have recorded deeds of the chain.

And he asked me, he said, "Let's see. Did Ace Associates convey it to Brinlee and Vinson?" Or he may have said, "Brinlee and Vinson, did they get title from Ace Associates?" I don't remember which.

I said, "Yes."

And he said, "Did they then convey the title to Select?"

And I said, "Yes."

Q Where did you get your information for that?

MR. SEGAL: Objection, your Honor.

THE COURT: The objection is overruled.

A I got my information from Mr. Harvey. I took notes of my conversation with him and I also had recorded the deeds myself. I knew there was some kind of chain on the property.

Q By the way, were you under oath at this time?

A No.

Q You were not appearing as a witness, were you?

A No, sir.

THE COURT: You didn't feel free to fabricate because you were not under oath, did you?

THE WITNESS: Oh, no, sir.

Q Did you have any discussion with Mr. Hewitt about the condition of the Riverside land, as you recall?

A Yes, sir.

Q What did he ask him and what did he tell you?

A He asked me what kind of land it was. I said that it was table top flat, sandy, loam soil.

Q Did you have any discussion with him as to the condition of the Imperial land?

A Yes, sir.

Q What did you tell him about that?

A I told him that it was desert land.

Q Did he ask you whether that land was in the Imperial Valley?

A Yes, sir.

Q What did you tell him?

A I told him no.

Q You have before you Government Exhibit 4, which

has been identified as a letter dated March 28, 1970 signed by M. S. Knisley. I think it is to the stockholde s of Select Enterprises.

Directing your attention to page 2 of that letter, the second full paragraph, read part of it. Read it and I will ask you whether that is correct.

I will read the whole thing:

"One of the more recent acquisitions brings to Select Enterprises a truly great potential. This exciting event is the securing of approximately 93,000 acres of land located in the well-known Imperial Valley of California."

Is that statement accurate?

A No, sir. It is in Imperial County and not in Imperial Valley.

Q Look at Government Exhibit 5, a brochure of Select Enterprises.

I have it.

Reading from the third page of that, the inside:

"Recently, Select Enterprises, Inc. acquired some 93,000 acres of land in the rich, fertile, Imperial Valley of California."

Is that statement accurate?

A No, sir.

Q Mr. Hewitt asked you to describe that land. Did you describe it as fertile or rich?

A No, sir.

Q Sir, during the course of that afternoon, were there any documents given to Mr. Hewitt?

A Yes, sir.

Q By whom?

A I handed to Mr. Hewitt two photocopies of maps of California that had been turned over to me by Mr. Harvey.

Q Were any other documents given to Mr. Hewitt? Do you recall?

A Yes. I think that documents were submitted to him by Dr. Boyd.

Q Did you inspect those documents beforehand?

A No, sir.

Q Did anything happen after the session with the Securities and Exchange Commission?

A Yes, sir.

Q What happened?

A Well, after the hearing was over Dr. Boyd and I were standing downstairs and Dr. Boyd was telling me that they had been able --

MR. SEGAL: Objection.

pgas5 Ford - direct

MR. GOLDMAN: May I submit a note, your Honor? I don't believe this is privilege.

THE COURT: The objection is overruled.

Q What did Dr. Boyd tell you?

A Dr. Boyd told me that they had been able to secure the services of a Securities and Exchange Commission lawyer by the name of Godfrey Sullivan.

Q What did you say to him?

A I said, "That's fine."

I said, "Stay right where you are and I will be back in a moment."

I went back down the hall and got on the elevator and went upstairs, down the hall, into Dick Hewitt's office, and I told him I had been relieved of any further duties and responsibilities representing Select and that they had hired Godfrey Sullivan to represent them.

With respect to that part about Godfrey Sullivan, his only statement was, "No comment."

Q You inquired of Godfrey Sullivan of whom, Mr. Hewitt?

A Yes, sir.

THE COURT: We will take our luncheon recess at this time.

I will ask the jury to return at 2:00.

(Luncheon recess.)

AFTERNOON SESSION

(Time noted: 2:00)

(In the robing room.)

THE COURT: What is it, Mr. Krieger?

MR. KRIEGER: If the Court please, I went up to the hospital this morning and met with the defendant and his wife. I have a handwritten authorization in the hand of the defendant, witnessed by myself and his wife, which, in effect, ratifies the motions that I have made in his absence and authorizes and consents to my motion for a severance and a mistrial made today.

THE COURT: Does the government have anything to say?

MR. SUSSMAN: No, your Honor.

THE COURT: In view of the confirmed illness of the defendant Selwyn Weber, his motion for a severance and a mistrial is granted.

The confirmed request confirming the authority of counsel to make this application is marked as Court Exhibit 32.

(Court Exhibit 32 marked.)

THE COURT: The original of this exhibit is delivered to the United States Attorney for safekeeping.

(In open court)

pgas2

(Jury in box)

R O B E R T E. F O R D, resumed.

DIRECT EXAMINATION (Continuing)

BY MR. GOLDMAN:

Q You had just testified at the luncheon break, I believe, as to your conversation with Mr. Hewitt on April 17 upon being relieved.

Subsequent to April 17, did you have occasion to represent anyone else in connection with Select for the SEC?

A Yes, sir.

Q Who was that?

A Mr. Ed Goodloe and Mr. Wayne Barnett.

Q Do you remember the date of their testimony?

A Yes, sir. I can give it to you.

Q Were those, by the way, some notes you made as to dates and events in preparation for today's testimony?

A Yes, sir.

On April 21 I went --

THE COURT: What year?

THE WITNESS: 1970, your Honor.

A (Continuing) On April 21, 1970 I went in with Ed Goodloe to an SEC hearing.

Q And Mr. Barnett?

A April 30, 1970.

Q When you represented Mr. Barnett and Mr. Goodloe and Mr. Boyd when they were called before the SEC, did they all testify?

A Yes, sir.

Q Were you present when they did testify?

A Yes, sir.

I was not present from 9:00 until 2:20 p.m. on the 17th of February when they were taking Mr. Boyd's deposition.

Q Sir, after April 17, aside from the representation of Mr. Barnett and Mr. Goodloe, did you do anything further on behalf of Select Enterprises?

A Yes. I obtained a correction assignment of oil and gas liens from L. G. Rhodes to E. D. Goodloe.

Q Is that reflected in Government Exhibit 161 before you?

A Yes, sir. This is it.

Q Tell the jury the circumstances that led up to your drafting that correction of assignment.

A Godfrey Sullivan called me from Waco, Texas and said he was unable to locate the assignment from L. G. Rhodes to E. D. Goodloe.

He called me and then he sent me the description

and other information from his file, and I received it in Abilene, and then I prepared the cover page and went out to see L. D. Rhodes at his ranch and had him sign it, and after he signed it and I notarized it I sent it back to Godfrey Sullivan and it was filed.

Q Did you ever do anything further in connection with Select?

A I don't have any recollection. I may have made a phone call. I don't know.

Q Did you have anything to do with a civil proceeding some years later?

A That was in behalf of Ed Goodloe, I believe.

What was your question?

Q Other than that, do you recall doing any other work for Select?

A No.

Q For the legal work that you did for Select, sir, what were you paid?

A I was given a check for $2500 and I was paid -- I was given 6700 shares of restrictive stock.

Ed Goodloe gave that to me.

Q What happened to the check?

A It was dishonored.

Q It bounced?

A Yes.

THE COURT: Whose check was it?

THE WITNESS: It was Joe Boyd's special account. I think he had made arrangements to have it honored but it was not.

Q Those 6700 shares that you said Mr. Goodloe gave you, what was that for?

A Legal services.

Q In connection with Select or involving anything else?

A In connection with Ed Goodloe.

Q Did it represent the conveyance or anything beyond that?

A I can explain it perpahs a little better this way: I went to Tucson, Arizona for Ed Goodloe in an effort to get some stock transferred. I had numerous conferences, letters and telephone calls with this company, and it all had reference to the C. A. Morris & Company situation. Mr. Goodloe received restrictive stock in C. A. Morris & Company, and I think that he individually got some 67,000 -- perhaps a few shares less than 67,000 shares, 10 percent of that --

Q You said "restrictive stock in C. A. Morris & Company." Do you mean C. A. Morris or do you mean Select?

A No. Select.

Q You said C. A. Morris & Company. That was a mistake?

A Yes, sir.

Q You said it was restrictive stock that he received?

A Yes.

Q What is "restrictive" stock?

A It can't be sold to the public. It can't be bought, sold, or traded, mortgaged, or pledged.

Q Sir, did there come a time when you met Mr. Joiner at your office?

A Yes, sir.

Q Can you give us your best recollection with that was and what the purpose of his visit was.

A I think that must have been sometime in June. I'm not sure.

Q What was the purpose of the visit?

A The purpose of his visit was to discuss with me the possibility of appealing a case for him.

Q Was that his criminal conviction that he mentioned?

A Yes, sir.

Q Did you ever handle that appeal?

A No, sir.

Q Why not?

THE COURT: I don't think that is important.

Q Mr. Joiner testified, do you recall, that you handed him some stock on behalf of Mr. Goodloe and took a receipt. Is that testimony correct?

A No, sir.

Q Do you know who did hand him that stock?

A Yes, sir.

Q Who was that?

A Ed Goodloe.

Q How do you know that?

A I appeared with Mr. Ed Goodloe at his SEC hearing in Fort Worth and he detailed that very clearly.

MR. STOKAMER: Objection, your Honor. Based on the answer it shows there is no personal knowledge.

MR. GOLDMAN: Let me clarify that.

THE COURT: Just a minute.

Who is "he" who detailed what?

THE WITNESS: Mr. Goodloe detailed the transaction before the Securities and Exchange Commission with reference to his delivering to Jim Joiner stock that belonged, I think, originally to Joe Boyd. He delivered it to Joe Joiner in my office. That's what I am referring to, your Honor.

THE COURT: He, Goodloe, delivered the stock in your office to Joiner?

THE WITNESS: Yes.

THE COURT: You were there?

THE WITNESS: No, sir.

THE COURT: How do you know?

THE WITNESS: Because I attended the SEC hearing and heard the testimony with respect to that.

THE COURT: Another witness said you are the one that gave it to him?

THE WITNESS: Yes, sir.

THE COURT: The objection is overruled.

BY MR. GOLDMAN:

Q Let me show you Government Exhibit 3. You have it before you, a letter on your stationery. Is that correct?

A Yes, sir.

Q Is that your signature?

A No, sir.

Q Do you know whose signature that is?

A No, sir. I don't know. It looks like my secretary's signature, but I am not sure.

Q Did you dictate that letter, sir?

A I have no recollection of it whatsoever. The

first time I saw it is after I came here to New York.

THE COURT: The letter has your initials on it as being the one who dictated it: REF/RW. Does that remind you of anything?

THE WITNESS: No, sir.

Q Those are typed in initials and that is not your handwriting?

A That's correct.

THE COURT: Is that the way your secretary will type letters that you have dictated, by putting your initials in capitals and her initials in small type?

THE WITNESS: Yes, sir.

THE COURT: That's the ordinary way in which letters went out when you dictated them; is that right?

THE WITNESS: No, sir, because ordinarily the letters would go out on a different kind of stationery at this time.

Secondly, she didn't ordinarily sign my name to any letter like this. She has done it in the past when I called and instructed her; I say, "Sign my name to this," but I didn't know about this letter, and I have no independent recollection of it.

Q You said "a different kind of stationery." That stationery lists your address as the Mims Building,

does it not?

A Yes.

Q That's dated April 2, 1970.

A Yes, sir.

Q When did you move out of the Mims Building?

A In December of 1969.

Q In 1970 --

THE COURT: There is one other question I want to ask about that.

The initials there are what appears to be the stenographer's: RW?

THE WITNESS: Yes, sir.

THE COURT: What was your secretary's name?

THE WITNESS: Romandell Wilson.

Q In the year 1970 did you have certain documents and legal papers relating to Select Enterprises?

A Yes. Title opinions and photocopies of the land conveyances.

Q You have a file relating to Select, in other words?

A Yes.

Q Did there come a time when you gave that to anyone?

A Yes.

Q When was that?

A That would have been a week -- let's say two weeks after April 17, 1970.

Q Who took them?

A Godfrey Sullivan and Joe Boyd came to my office and took my entire file with them.

Q Do you remember yesterday my reading from a deposition involving Mr. Peterson about who came to take the papers?

A Yes.

Q Was that stenographic record correct?

A No, sir.

Q When did you first meet either James Peterson or Robert Peterson?

A I met them both in the early part of 1970, perhaps in January.

Q Do you recall the circumstances of your meeting with them?

A Yes, sir. They wanted to talk to me about representing them. They had a cause of action, they thought, against the United States government for certain funds for running a nursing home or hospital or clinic there in Fort Worth.

Q Had you at any time met them before that time?

A Yes, sir. I met both of them in my office in December of 1969.

Q Do you recall the circumstances of meeting them then?

A Yes, sir. I was called by Mr. Goodloe to come in and meet them. His office was across the -- on the other side of my office, and I went in and sat down with him with them and met them and talked with them for a few minutes, and they wanted me to send a financial statement of the Petersons to Mr. Lloyd London in Cisco, Texas, who was a vice president of a bank there and a friend of mine.

Q What was the purpose of your sending that financial statement?

A They wanted to borrow money from the bank.

Q Did they tell you what for?

A No, sir.

Q Did you ever promise Mr. Peterson or Mr. Goodloe to draw up any assignments of oil and gas leases to them?

A Never.

Q Did either Mr. Robert Peterson or Mr. James Peterson ask you to draw up any documents of that sort?

A Absolutely not.

Q When you drew up the gas and oil assignment for

Mr. Goodloe to Select, did you have any knowledge of any interest that either of the Petersons had in those leases?

A No.

Q When you drew up the opinion letter, did you have any knowledge of the interest of the Petersons in those leases?

A No, sir.

Q You said that you met the Petersons to discuss an action involving attempts to get reimbursement from the United States government?

A Yes, sir.

Q Did they ever come to you and discuss any other legal affair with you?

A Yes, sir.

Q When was that, as best you can remember?

A Dr. Peterson called me and his brother Donald Peterson was on the line and we had a three-way telephone conversation. They had been sued by the First National Bank in Cisco, Texas, and they asked me to represent them on a per diem basis in that lawsuit and wanted me to answer the lawsuit, and they sent me the papers. After that conversation they sent me the papers to Abilene, Texas for the purpose of filing an answer

on their behalf.

Q Did you in fact represent them in that matter?

A No, I didn't.

Q Tell the jury why you did not represent them.

MR. MAC DONALD: Objection.

THE COURT: I don't think we are interested in that.

Q Did you refuse to represent them, sir?

THE COURT: That's irrelevant too.

MR. GOLDMAN: May I send your Honor a note?

THE COURT: It would be quicker to ask the question:

Why didn't you represent them?

THE WITNESS: Because they had come cut to Abilene and had taken a car away from Mrs. Goodloe, and they were very rude to her and inordinate, and I wrote them a letter and told them that I didn't like what they had done, and I would not represent them --

THE COURT: Because they were socially rude?

THE WITNESS: Yes, sir.

THE COURT: Go on.

Q Explain what happened with reference --

THE COURT: I don't think so. We are not interested in the degree of civility involved here.

MR. GOLDMAN: I think it is somewhat more than your Honor has said.

THE COURT: I am taking the witness at his word and not you at yours. He said it was incivility.

Q Did you subsequently write a letter to - Dr. Peterson telling him to return the documents?

A Yes.

Q Do you have a letter with you?

A Yes (handing).

Q Is that marked Defendant Ford Exhibit B?

A Yes. I wrote that letter and certified it to them on November 4, 1970.

Q Sir, you said this was a suit by the Cisco bank, as such, against the Petersons. What were the actual names of the parties?

A Lloyd L. London v. Zodiac Enterprises, Inc., et al., and the "et al." included the Petersons, both Dr. Peterson and his brother.

Q Zodiac Enterprises was what? Do you know?

A All I know is that it was a corporation.

MR. GOLDMAN: I offer the letter.

MR. MAC DONALD: Objection.

(Defendant Ford Exhibit B received in evidence.)

MR. STOKAMER: May I see that, please?

THE COURT: Why didn't you sign this letter?

THE WITNESS: That's a copy. I signed the original.

MR. STOKAMER: I have no objection, your Honor.

Q Did there come a subsequent time when you discussed any other legal matter with the Petersons?

A Yes.

Q When was that?

A I think it was in May of 1971.

Q Can you tell us with whom you discussed that and where?

A This discussion was held with, I believe, just Dr. Peterson's brother, the witness that was here.

Q James Peterson?

A Yes, sir.

Q Tell us what that discussion was and what he asked you to do, what happened.

A Yes, sir.

He talked to me about suing Select Enterprises in an effort to get -- to recover the moneys that he claimed they had lost in the Cisco bank deal, and they were suggesting to me that part of that money may have been used to purchase -- may have gone into the purchase of the oil and gas leases, and this was my first knowledge

of that.

Q Were you subsequently hired to prosecute a suit on that matter?

A No. We had an agreement as to how it would be done and the process in which it would be done, but they didn't send me the money for it and as far as -- that's the last I heard of it.

Q Did there come a time when you gave a deposition in connection with a civil proceeding involving Peterson?

A Yes, sir.

Q Do you recall when that was?

A That was, I believe, in March of 1972.

Q '72, sir?

A I believe that's correct. Let me look.

March 17, 1972.

Q During the course of your deposition, were you asked when you wrote an opinion letter concerning the Comanche County oil and gas leases?

A Yes, sir.

Q What did you say at that time?

A In March 19&0.

Q Was that testimony accurate?

A No, sir.

Q At the time you gave that testimony did you have, I believe it is Exhibit 34, or any copy of that in front of you?

A No, sir.

Q Did you have any copy of the assignment in front of you?

A No, sir.

Q Did you have any copy of the opinion letter in

front of you?

A No, sir.

Q During the course of that deposition did you ask to see a copy?

A Yes, sir.

Q Did anyone show one to you?

A No, sir.

Q During the course of that deposition did anyone ask you directly whether or not you backdated an opinion?

A No, sir.

Q Did you backdate that opinion, sir?

A No, sir.

Q There came a time during the course of that deposition when you were excused and Mr. Barnett testified, is that correct?

A Yes, sir.

Q Were you present when Mt. Barnett testified?

A No, sir. I was a witness in the case, apparently, and they had invoked the rule and I stayed out.

Q What rule?

A In Texas, we have a provision whereby the witnesses stay outside of the hearing of the testimony of any other witnesses in a case, even when a deposition is

being taken.

Q Is that for witnesses or only people who are not actual parties to the suit?

A Witnesses. I was not a party to that lawsuit.

Q Did there come a time during the course of that suit when you were told that Mr. Barnett had said that that document had been signed in January?

A Yes, sir.

Q And were you asked if you believed Mr. Barnett's testimony was correct?

A Yes.

Q What did You say?

A No, it isn't.

Q At that time were you shown a copy of the document?

A No, sir.

Q How many opinion letters have you written in your life, Mr. Ford?

A I would have no way of knowing that. There has been numerous opinions, oil and gas lease opinions, over the years.

Q Back in 1970, had you ever heard anything about Diamond furniture?

A No, sir.

Q Anything about the Riverside Hotel in Nevada?

A No, sir.

Q Did you ever give the SEC any documents relating to either of those places?

A No, sir.

Q Were you ever general counsel to Select?

A No.

Q Did you ever go to Nevada in connection with any dealings with Select?

A No, sir.

Q Did you ever discuss the issuance of stock with anyone in Nevada?

A I did not.

Q Did you ever speak either in person or on the phone with any broker in New York concerning Select?

A No, sir.

Q By the way, did you ever have a brokerage account in your life?

A No, sir.

Q Did you ever give any opinion relating to the free trading nature of Select Enterprises stock?

A No, sir.

Q Did you ever speak to anyone about a company called Goldfield Candelaria, prior to, say, April of 1970?

A No, sir.

Q Did you ever give anyone any quotations as to the value of Select stock?

A No, sir.

Q Did you ever send any letters to anyone containing documents, either Government Exhibit No. 4 or 5 -- that is the --

A You are speaking of the Grube letter?

Q No. I am speaking of 4 and 5, sir.

4 is the letter to shareholders and 5 is the brochure.

A No, sir.

Q Did you ever see those documents, sir, prior to April 17?

A I may have seen them on April 8 or 9. I don't recall whether I saw them then or saw them on April 17.

Q When you say 8 or 9 where would you have seen them?

A At the informal SEC hearing.

Q Did you have anything to do with the preparation of either of those two documents?

A No, sir.

Q Did you ever backdate any documents with respect to Select?

A No, sir.

Q Have you had occasion to read the indictment and the individual counts dealing with telephone calls and letters?

A Yes, sir.

Q Did you make any of those calls?

A No, sir.

Q Did you send any of those letters?

A No, sir.

Q Did you ever give any documents to the SEC, knowing them to be false?

A No, sir.

Q Did you ever give any information to the SEC knowing it to be false?

A No, sir.

Q Did you ever meet with anyone to discuss fabricating a story to be given to the SEC?

A No, sir.

Q Did you ever agree with anyone or suggest to anyone that he he should give false testimony to the SEC?

A Absolutely not.

Q Did you ever pledge any Select stock for a loan or sell any Select stock?

A No, sir.

MR. GOLDMAN: I have no further questions.

THE COURT: Is there any defendant who wishes to examine this witness on direct?

MR. SEGAL: On cross.

THE COURT: On direct, first.

MR. SEGAL: No, your Honor.

THE COURT: Then the Government may proceed.

CROSS-EXAMINATION

BY MR. MacDONALD:

Q Mr. Ford, I have placed a mark on the file, Government's Exhibit 420 for identification. I wonder if you could identify generally the document you have in your hands and if you would also be kind enough to give me the file that you have consulted from time to time and I will have someone put 421 on it.

A Mr. MacDonald, these documents were handed over to my attorney in an effort to respond to your subpoena before this Court. It was returnable, I think, the day after Labor Day.

Q Is that the file which you found in the storage room in the Ford building in Abilene shortly --

A This is part of it, yes, sir.

Well, Mr. MacDonald, let me be just a little more specific, if I may.

Q Yes, sir.

A This file is a potpourri of papers and documents in response to the subpoena and it doesn't -- some of the documents here were not found in the old file. Some of them were. Some of these deal with later cases and other individuals.

Q And you are No longer able to tell us which, or are you, portions of that came from that file which you found in the storage room in which your opinion letters were found?

MR. GOLDMAN: Objection, your Honor. There has been no testimony to that.

THE COURT: He has asked him a question.

MR. GOLDMAN: He is assuming a fact not in evidence.

A Yes, sir, I believe I can. Would you like me to go item by item?

Q As a general proposition, the documents which bear writing in the upper right-hand corner, Exhibit, EX., and a number, were those documents contained in the file that you referred to as having been found in the storage area?

A There were several files found in the storage area and some of these documents were from those files

and some were not from those files.

Q For example, the --

A All right.

Q Let me ask you a specific question.

A All right.

Q There is a subpoena addressed to Roma Dell Wilson that has in the upper right-hand corner the notation Exhibit 15?

A Right.

Q Do you have a recollection of where that document came from in respect of the stored file?

A This came from an old file of mine and not from the stored files.

Q Was the old file of yours the one that related to the Peterson versus Atoka Bank action?

A Yes -- well, I was not involved in that action but, then, this was in the miscellaneous file that occurred because my secretary that day had been subpoenaed to appear and give testimony, also.

Q I see. Did she actually give testimony in the course of that day or did she simply appear and respond to the command of the subpoena?

A No. After the deposition was over, Mr. Jordan decided that he did not want her testimony.

Q I would like to hand --

A She was standing by.

Q I would like to hand you 422 and ask you to identify that as a file which you also brought to New York at the same time in response to this subpoena in this case.

A May I open it?

Q Sure.

A I don't remember having seen the file but I am not --

MR. SEGAL: Your HOnor, I owuld object to any examination on this file which, I believe, is Exhibit 422. I believe that falls in the category that has already been determined.

THE COURT: Overruled.

MR. STOKAMER: Your Honor, if there will be any testimony about the contents of the file, I would like to have an opportunity to take a look at it it. I have no idea what's in it.

THE COURT: The orderly procedure, where you are not examining, is to let the examiner proceed; you listen to the questions and take your positions as you hear them.

(Pause.)

A Mr. MacDonald, this appears to be one of those

Q Files from the storage room?

A Yes.

Q I will hand you Defendant's Exhibit F for identification and ask if that is one of the documents that came from that file.

A There were a number of files, Mr. MacDonald, and this was in one of the files.

Q Is it the same for Defendant's Exhibit E for identification?

A Yes, sir.

Q It is true, is it not, that you had once before received a subpoena with respect to bringing documents that pertained to Select Enterprises, Incorporated, to New York?

A Yes, sir.

Q That was in the course of the grand jury stage of this case in which the grand jury's process required you to bring such documents here?

A Yes, sir.

Q I take it you overlooked the file and the two exhibits that have now been removed from it on that earlier occasion and you found them for the first time only in August of this years?

MR. GOLDMAN: Objection.

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MR. SEGAL: Objection.

THE COURT: Well, is that the fact? That will fix the question up.

A Should I -- am I permitted to answer now, Judge?

THE COURT: Yes.

Is that the fact?

A Yes, sir. On that grand jury hearing date, I did not have any papers with me at all.

Q Did you have occasion to communicate with Mr. Sullivan or Mr. Boyd in regard to obtaining back from them the file which is before you, 422, or is 422 the file which or portions of it, at least, which Mr. Sullivan and Mr. Boyd took away from your offices?

A No, sir.

Q It is not.

That one was, as far as you know, in your office from 1970 until this August?

MR. GOLDMAN: Objection to form.

Q That 422 before you.

THE COURT: Add the words "is that the fact", and we won't get the objections as to form.

A Mr. MacDonald, would you restate your question and I will try to answer it.

Q Is it the fact that Government Exhibit 422, as far as you know, was in the storage room of your offices from some time in 1970 until August of 1975?

A Yes, sir. Just -- I brought it to New York and turned it over to Mr. Feldman.

THE COURT: He is asking you whether during that five-year interval it was in your storage room.

THE WITNESS: Yes, it was in my storage room that period, plus a little additional time.

Q Are there any additional documents that you have seen, when you looked through at least the one file which you looked through, which bear on Select Enterprises, Incorporated, in that closed file, 422; not the open one but the closed one?

The one to your left. I think it is marked 422, is it not?

MR. GOLDMAN: Objection, your Honor.

May I send your Honor a note, please?

THE COURT: Yes. You can prepare yourself for the answer but wait until I rule.

A Yes, sir.

THE COURT: Just a minute. We are waiting for the note.

Q Can you set that one aside, set aside the

document which you just said "Yes, sir" in regard to.

I guess you saw a document --

MR. GOLDMAN: Excuse me. I have an objection.

THE COURT: Just a minute. Let Mr. Goldman write out the note and send it up here,

(Pause.)

THE COURT: Mr. Goldman, the contents of the documents have not been discussed. The location of the documents is the only subject thus far. I will bear in mind what you have written to me and I will also show it to Mr. MacDonald, so he will know what you wrote to me.

The objection, Mr. Segal, that you sent up, will be marked Court's Exhibit 33.

I do not perceive any direct or indirect action such as you describe at this time.

(Court's Exhibit 33 marked.)

Q Mr. Ford, have you identified to yourself one or more documents in that file which pertain to Select Enterprises?

A Yes, sir.

Q Can you tell us, first of all, if any of them or any of those documents are copies of outgoing correspondence to other persons?

MR. GOLDMAN: Objection.

MR. SEGAL: Objection.

MR. STOKAMER: Objection.

THE COURT: Sustained.

Q Are there any of those documents which you have looked at which you can affirm came into your possession from some person who was an agent of Select Enterprises, Incorporated?

MR. GOLDMAN: Objection.

MR. SEGAL: Objection.

THE COURT: Yes. I think I will sustain that, too, Mr. MacDonald.

MR. Mac DONALD: Perhaps I can postpone this subject and move to something else for the time being.

THE COURT: All right.

Q On the occasion of your giving testimony in March of 1972 in the Atoka versus Peterson civil action --

A Yes, sir. May I have my notes back, please?

(Notes handed to the witness by Mr. MacDonald.)

Q On that occasion, did you voluntarily attend to give testimony and evidence during that deposition?

A I don't recall.

Q Do you recall if you were subpoenaed and it was pursuant to subpoena that you had your deposition taken and your evidence given?

A I don't recall.

Q Do you recall whether or not in the course of that morning two other additional depositions were taken -- that of Mr. Rhodes, the original assignor of the oil and gas leases, and that of Mr. Brown, a person who owned an overriding royalty interest?

A I don't recall the deposition of Rhodes and Brown.

Q Do you recall being asked by the attorney taking your deposition if you had any documents that bore on the matter that they were going to ask you about?

A No, sir.

Q When your secretary came back --

A May I amend that answer a little bit?

Q All right.

A They asked me if I had a copy of the tile opinion and my reply was no.

Q You also added, did you not, that maybe when your secretary comes back, you can look --

A That was in a different place in the deposition, Mr. MacDonald.

Q Do you recall if when she returned that day she actually helped in a search to see if there were any documents which bore on the matter?

A No. After my deposition was concluded, Mr. Jordan, I invited Him to come on by and see the secretary and let's dig this out and she was under subpoena to testify and she was standing by to testify and he said no, that wouldn't be necessary.

Q Had she undertaken to collect whatever documents there were in the office in response to the subpoena which you have identified directed to her?

A We both looked. At that time my entire file had been taken out of the office by Mr. Sullivan.

Q Between that time and the time you appeared here in New York for the first time in February of 1975 before the grand jury, did you endeavor to obtain back from Mr. Sullivan that entire file?

A No, sir.

Q Have you, to date, made any efforts or, since February of 1975, made any effort to obtain the return of your files?

A Yes --

MR. GOLDMAN: Objection to "your files", your Honor.

THE COURT: I beg your pardon.

MR. GOLDMAN: Objection to the term "your files".

THE COURT: Overruled. It is subject to the

witness' answer.

A Mr. MacDonald, after --

THE COURT: Have you ever been able to get the papers back from Mr. Sullivan between February and now?

THE WITNESS: No, sir.

Q I would like to direct your attention, Mr. Ford, to that portion of your practice which relates to transactions in land.

I believe you said that that was one of the areas of your practice that recurred?

A Yes, sir.

Q Or maybe you specialized in it.

Would you tell the jury, please, if you have any special experience or expertise in land transactions in Abilene, Texas?

A I think I do, yes, sir.

Q It is true, is it not, that sometimes at least in land transactions, parties will sign contracts some time in advance of the day when they have to pay the money and exchange a deed?

A Yes, sir.

Q And the contracts sometimes recite an obligation on the seller to present a deed in proper order and an obligation on the part of the buyer to present the purchase

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price, the money?

A Yes, sir.

Q And sometimes the contracts recite a time certain for a closing, when that exchange would occur and sometimes they are silent in ...at regard?

A Yes, sir.

Q During the interim period between the signing of the contract and the closing, lawyers sometimes lend their services to the buyer and the seller in endeavoring to bring about the closing properly and with all legal papers in good order?

A That's correct.

Q That is what the lawyer's services in regard to a land transaction include usually, right?

A Yes, sir.

Q And in Texas, at least in Abilene, the deeds, all the deeds are indexed so that a lawyer representing a seller can go to the County Court House and the lawyer representing the buyer can go to the County Court House and see if the seller appears to own what he has promised in the contract to convey?

A That is possible but seldom does it occur.

Q The deed, in any event, that the seller received from his seller in turn is usually found recorded

there, is it not?

A Not exactly in that way, Mr. MacDonald. True, it is recorded but we operate -- we examine titles through abstracts in Texas.

Q And that means there is a special person that you hire who gives you excerpts from what appear on those recorded records?

A Yes, sir.

Q And they give you an abstract report and the lawyer can read the report and assure himself that the seller appears to own what he is about to convey?

A Yes.

Q And that abstract is sometimes referred to, is it not, as title insurance, perhaps?

A Nc, sir.

Q Well, does some person or organization or company undertake to pay money to the buyer if it turns out the buyer was defrauded and didn't get the land that he thought he was getting?

A Not with reference to abstracts.

THE COURT: He didn't ask you that question. He wants to know whether there is such an arrangement in the ordinary course in your town in Texas, where some organization agrees to pay the buyer back what he has given up if

it turns out that he has been defrauded.

THE WITNESS: When land transactions are closed on title policies, that is true.

Q I take it you have some familiarity with title policies.

A Yes, sir.

Q On those same indexes and, I guess, in the same abstract, perhaps, you can learn if a mortgage has been filed concerning the property which is proposed to be conveyed.

A That would be a separate index, sir.

Q But, it is still in the County Court House and it is a matter of looking up in the appropriate index under the name of the bank, perhaps, or the name of the seller? The name of the seller, I suppose, isn't it?

A No, it is not in the County Court House.

THE COURT: Well, isn't there some place where you look for encumbrances on titles?

THE WITNESS: Yes, sir. The Secretary of State.

THE COURT: That is what he is asking you. Isn't there a place to go look at encumbrances, at the County Court House?

THE WITNESS: Not on the personal property in

the State of Texas. Not on personal property. You have to check with the Secretary of State.

THE COURT: He is talking about real estate. It is not personal property.

Is there a place you can go to find out whether a property is encumbered by a mortgage or liens or something else?

THE WITNESS: Yes, sir.

Q I guess there is a County Assessor's Office or the equivalent taxing authority where you can go to see who is on the tax roll or who is principally liable and to see if the taxes are already paid or if they are in arrears?

A Yes, sir.

Q You testified that so long as the deed has not been delivered no transfer occurs, at least in your experience, in Abilene, Texas; that is the seller keeps the signed deed in his pocket, no transfer has yet occurred. Do you recall that testimony?

A Yes.

Q It is true, is it not, that even after the deed is delivered that there are certain dangers to the buyer with respect to his title if he doesn't get down to the Court House and record it?

A True.

Q And there are advantages to prompt recordation after a closing occurs by the buyer?

A Yes, sir.

Q One of the advantages is that if the seller decides to sell it again and again and again, the first person to the Court House with the deed may have the advantage in court in trying to sought out who really got the land from that seller? Is that true?

A It's difficult for me to answer yes or no.

THE COURT: Well, can't you answer whether the first person who records comes ahead of the subsequent people who don't record? Isn't that plain?

THE WITNESS: No, it isn't.

THE COURT: In land conveyances?

THE WITNESS: Your Honor, there are some cases in Texas that deal on that point. Reasonable time is a rule with the Court in Texas, as with reference to the conveyance of realty. There are two cases involved.

THE COURT: You mean to say to me that if on Monday I get a deed from you and rush down and record it and on Tuesday and Wednesday and Thursday you make out new deeds that are unrecorded, that the Monday deed is not ahead of the others?

THE WITNESS: Not necessarily.

THE COURT: In Texas?

THE WITNESS: Yes, sir.

Q Is it a matter of practice in any event that lawyers, after closings, promptly send the deed to the Court House with a runner or carry it down themselves?

A That is always the practice with reference of conveying homes and other, and a lot of times other properties, yes. There are other situation, in which it is not done.

Q Indeed, isn't it true, if it is a very valuable an expensive piece of property, that the lawyer at the closing willactually have somebody standing by at the County Clerk's Office at the end of the telephone to make sure that no one has dashed in the door with a deed first?

A Yes, sir.

Q Have you had an occasion or experience before the spring of 1970 to ever practice law or render legal advice with respect to the law of transactions in New Mexico, in Rio Arriba County, if that is special?

Do you understand my question?

A Yes, sir.

Q Do you have any special experience with respect to the New Mexican law concerning the recordation of rights

and title to property?

A I have had some experience there, yes.

Q And it is true, is it not, that in Rio Arriba County there is an index which someone can look at to see if a mortgage, for example, exists on a mining claim?

A I would think so.

Q And to see if a mortgage exists on the plant site on top of the hillside where the mine entrance is?

A Yes, sir.

Q And we have seen such a mortgage here in court, have we not, yesterday admitted into evidence? Do you recall that document?

A Yes, sir.

Q Do you have any special experience with respect to the law of Nevada concerning transactions or contracts dealing with real estate?

A No.

Q Do you have any special experience, prior to your trip to California, with regard to the laws of California?

A No.

Q You remember the date on the occasion of the second meeting with Mr. Brinlee and Mrs. Vinson at your offices?

A March 2, 1970.

Q The first meeting is the day of the contract which --

A February 17, 1970.

Q -- bears that date written in and the second meeting is dated by the letter which you drafted, bearing the date March 2?

A Yes, sir.

Q This is that letter, Defendant Ford's Exhibit A?

A Yes.

Q And it is your testimony that you drafted this letter at whose instructions?

A At Mr. and Mrs. -- I mean not Mr. and Mrs. -- Mr. Brinlee and Joan Vinson and --

Q Mr. Goodloe was present on that occasion?

A And Mr. Boyd was.

Q Mr. Boyd was, as well?

A He was present.

Q Was Mr. Goodloe also present or was it just --

A Yes. Goodloe was present there, too.

Q Did either Mr. Boyd or Mr. Goodloe tell you anything with regard to the contents of this document or were the contents obtained solely and exclusively from Mr. Brinlee and Mrs. Vinson?

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A No. They had a joint meeting and discussed it and then came into my office and told me what they wanted and I dictated it.

Q Why don't you just tell us what you remember it is you were told on that occasion. Tell us who was doing the speaking and what they told yo u.

A It was joint conference between myself and Boyd, as I recall, and Goodloe and W. L. Brinlee and Joan Vinson and I can't recall what was said. It has been too long ago.

Q Is it your best recollection that at least they asked you to draft the letter and the letter containing the matters that are set forth in this letter?

A Yes, sir.

Q Can you tell us if on reading -- I will read the last paragraph --

"It is understood and agreed that the negotiations with this transfer of stock for land were had in the State of Nevada and are subject to the laws of said state."

Do you have any recollection with regard to who it was who contributed that thought?

A No, sir.

Q Do you have, today, any recollection that you

can tell us about what effect that would have on the transaction that you prepared the contract for two weeks earlier?

A I assume, sir, that --

Q I want you to tell us, first of all, if you have any knowledge and then perhaps I will ask you for your assumptions.

A Would you repeat the question, just one more time? I want to --

THE COURT: What effect would this paragraph have on a contract for sale made two weeks earlier, this letter saying "Subject to the laws of Nevada"?

THE WITNESS: I assume that it would place venue for litigation in the State of Nevada.

THE COURT: Is that all?

THE WITNESS: Well, jurisdiction.

THE COURT: Suppose there was no litigation; then what?

THE WITNESS: Then, I don't know, sir.

THE COURT: Wouldn't it make it subject to the laws of Nevada in connection with real estate?

THE WITNESS: I th ink that is very reasonable.

THE COURT: You mean as a lawyer you dont know what it means to say "Subject to the laws of Nevada"?

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THE WITNESS: Judge, I haven't read the law, the conflict of laws on this particular interpretation of this paragraph.

THE COURT: We are talking about a paragraph that you wrote.

THE WITNESS: I don't know what the full legal ramifications of that is.

THE COURT: You mean you wrote a paragraph, the ramifications of which you didn't know about?

THE WITNESS: Judge, the people that I conferred with suggested to me that that paragraph be put in there and I put it in there.

THE COURT: You mean these layment who were there told you to put that in there?

THE WITNESS: Yes, sir.

Q I would like to show you a copy -- I cannot locate the original right now -- of Government Exhibit 60 in evidence. I ask you to examine that and tell the jury if you can identify that document.

A I have seen it as part of the government exhibits.

Q That's a letter on your letterhead signed by someone, using the name E. D. Goodloe?

A Yes.

Q Did you authorize anybody to employ your stationery for a letter such as the one before you?

A I don't recall.

Q How about the contents? Do you have a recollection of ever having discussed with Mr. R. C. Maxson the transaction referred to governing the Patio Building and this sale for stock in Select Enterprises?

A No, sir.

Q I direct your attention to the second paragraph, the second sentence: "It is your understanding and our understanding that the trade for the stock was negotiated and consummated under the laws of the state of Nevada."

Does that refresh your recollection in any way, Mr. Ford, with respect to the original authorship of this letter?

A No, sir.

Q Do you have a recollection of having received the deed from Mr. Maxson under the arrangement wherein you were permitted not to record that deed but simply to hold it?

A I have a vague recollection of something along that line. I don't recall who it was and what the situation was.

THE COURT: The proper question is: Did you do that or didn't you?

THE WITNESS: I do not recall.

Q Do you ever recall discussing with Mr. Goodloe the preparation of a letter that he might sign which would be exchanged for a deed, promising not to record the deed but simply to use it for some purpose short of recording?

A No, sir.

Q I would like to direct your attention to a new subject, the occasion on Friday, April 17, of your arrival at the Securities and Exchange Commission while Mr. Boyd was having his testimony taken. I hand you Government Exhibit 29, a transcript of those proceedings which I have opened to page 121. Look at line 23. Do you see the entry there where it announces that at 2:20 p.m.

you arrived?

A Yes, sir.

Q That's what it says?

A Yes.

Q At that point it is true, is it not, that you were asked if you were the corporate attorney for Select Enterprises, and you stated that you were acting in that capacity?

A Yes, sir.

Q You then produced certain documents, did you not?

A No, sir.

Q I would like to direct your attention to the matter beginning on line 16.

A All right.

Q It says, first of all, by Officer Hewitt, does it not, that he asks the court reporter to mark certain exhibits whereupon Commission's Exhibit JB-20 through JB-23 were marked for identification?

A Yes.

Q Then he says, does he not, "Mr. Boyd" -- who was the witness -- "these are records which Mr. Ford produced this afternoon. Marked as Exhibit 22 is a contract between Ed Goodloe and Select with regard to

66,667 shares of Select stock.

A That's true.

Q Mr. Boyd answered yes?

A Yes.

Q Then he went ahead, and in the next two - questions he identified that document as being the contract between Mr. Goodloe and Select Enterprises for certain oil and gas leases on Comanche County, and that's the trial Exhibit 35 before you, that was then marked Joy Boyd Exhibit 22; is that correct?

A Yes, sir.

Q That's the contract which you told this jury you don't believe you had any hand in creating, someone else created that contract so far as you are aware.

A Yes, sir.

Q Is your recollection refreshed that you may have produced that very exhibit before you, Government Exhibit 35, on that occasion? Perhaps it was in your briefcase before you arrived that afternoon?

A No, sir.

Q I would like to direct your attention to line 10 on page 123 where Mr. Hewitt refers to the next exhibit: "Marked as Exhibit JB-21 is a photocopy of a letter dated March 27, 1970 from Richard Cobb, independent

appraiser. This is talking about property in the ranch land addition?"

And then Mr. Boyd answers, "That is the South Midland property."

Is that correct?

A Yes, sir.

Q I would like to direct your attention to what has been marked before you, Government Exhibit 39-B. It is on the railing. Do you see that?

A Yes, sir.

Q Do you see the original reporter's markings, J. B. 21, 4/17/70, and the initials?

A Yes.

Q Is your recollection refreshed that that very document you have in your hand is the one you produced at 2:20 p.m. on April 17 for the examination that was then going on with Mr. Boyd?

A No, sir.

Q Do you know Mr. Cobb?

A No, sir.

Q Have you ever met him before you saw him here in court?

A No, sir.

Q Have you ever seen that document before it was

so referred to by the examiner on April 17?

A No, sir.

Q Do you have any knowledge you can share with the jury about the matters contained in that letter?

A No.

Q It refers, does it not, to property at the ranch land addition in Midland, Texas?

A I have no knowledge of that property at all.

Q Had you been asked by anyone to do anything with respect to Select acquiring that property?

A Can you tell me what property that is? I know it says ranch land. That doesn't ring a bell.

Q Sometimes referred to as the Grube property.

A Yes, I know something about that.

Q Had you been asked prior to April 17, 1970 by anybody connected with Select to do something for Select concerning that property?

A No, sir.

Q I would like to hand you the tissue of Defendant Ford Exhibit E. You will note in the upper right-hand corner that there are some writings.

A Yes.

Q Concerning the exhibit number.

A Yes.

Q Do you know who put those writings on there?

A I did.

Q What exhibit number does it relate to?

A It relates to a letter that I wrote to Mr. Paul Feldman in New York in trying to get him the background of this whole case, and in the letter I referred to exhibits and in response to the subpoena he pulled this out of the file I sent him and put it -- It was supposed to be put in the file and brought to the court.

Q The various items in this file which we have identified earlier, which bears similar numbers, were put on by yourself under the same circumstances?

A Yes, sir.

Q You refer to your having received 6700 shares of restrictive Select Enterprises stock.

A Yes.

Q Tell us where you were and who was with you when you first saw that Select stock certificate.

A Mr. Goodloe gave it to me, and I can't recall exactly the date. I did produce that document for the SEC and had them make a copy of it to let them know I had it.

Q Then you took it back to your office?

A Well, right now I recall that there might have been one, two, or three certificates totaling 6700.

Mr. MacDonald, I think I may have sent those in -- They were in the name of Ed Goodloe, trustee, and I may have sent them to the registrar of the stock in order to be exchanged for the Robert E. Ford, one single certificate of 6700. I'm not sure. I can't recall.

Q Do you recall whether you showed three stock certificates --

A Yes. That's so.

Q -- letters to the SEC?

A Yes.

Q So on whatever date that was you still had three certificates?

A Yes, sir.

Q Do you recall if that was after this occasion on April 17 with Mr. Boyd?

A Yes.

Q Was it after Mr. Barnett's deposition which took place a few weeks later?

A I can tell you exactly what I think it was. I believe it was April 21.

Q What was the event on that day --

A The SEC was taking the deposition of Ed Goodloe

on that day.

Q It is your best recollection on that occasion you presented three certificates in Mr. Goodloe's name? They were yours, showed them to Mr. Hewitt and took them away with you on that occasion?

A Yes. That's my best recollection.

Q Is it your recollection that thereafter you sent them to the Rocky Mountain Securities Transfer Company in Santa Fe, New Mexico with the request they be transferred into your name?

A I seem to remember something like that. I'm not positive.

Q Do you seem to recall getting back a single certificate in your name at that point?

A Yes.

Q Where is that certificate today? What did you do with it?

A I tore it up.

Q Do you recall the circumstances which led you to tear it up? Can you tie that to a specific event or date?

A I was cleaning out my desk and there were a number of items there that I no longer wished to keep, and I tore it up and put it in the waste basket. I think

that that's the case.

Q Whom did you consult with at Select Enterprises to sending the certificate in for transfer, as you described? Anyone?

A I have no memory of that at all.

Q I believe you said that that stock was restrictive stock?

A Yes.

Q And it bore a legend across the face, "This stock may not be transferred. Restrictive," or some such legend?

A Yes.

Q Did you obtain any consent from the corporation, Select Enterprises, instructing the transfer agent to go ahead and transfer that stock into your name?

A No, sir.

Q Is it your best recollection that the stock that you received back bore a similar legend?

A Yes, sir.

Q Do you have a recollection, Mr. Ford, of having received a month earlier, in addition to the Goodloe trustee certificates you have referred to, a piece of stock in your name for 6700 shares in Select Enterprises without any restriction on the face?

A No, sir.

Q Have you looked at the Nevada transfer records in the course of this case?

A No, sir.

Q I would like to direct your attention to a March 16 entry. Do you see the entry at the top of that page?

A It says Select Enterprises, Inc.

THE COURT: Does that indicate to you that you got back a stock certificate of 6700 shares without any inscription on it a month before this event?

THE WITNESS: No, sir.

Q Does it indicate that somebody named Robert E. Ford of Abilene, Texas was the transferee of 6700 shares?

A True.

Q Does it indicate that there were two transferors at least whose certificates were given to make up the 6700 shares that were issued to that Robert Ford? Can you read the document in your name?

A I see the transferors.

THE COURT: Is there any other Robert Ford in Abilene?

THE WITNESS: No, sir.

Q Did you give permission to any person to employ

your name on a Select Enterprises stock certificate?

A I did not.

Q Did you give permission to any person to employ your name generally on stock certificates?

A No, sir.

Q I would like to direct your attention, Mr. Ford, to an earlier meeting with Mr. Boyd at the SEC. You have referred to it as being on April 9 or 8th a couple of times, and I would like to show you Government Exhibit 28-A for identification and call your attention to the date of the memorandum being the 9th, but it refers to an April 6 meeting, does it not? See, on the left-hand side it says April 6?

A Yes, sir.

Q That's the same meeting, is it not, that you referred to in the course of your testimony on direct examination?

A Yes, sir.

Q You and Mr. Boyd attended together, with one another, the whole meeting. You went down to Fort Worth for this specific purpose of seeing Mr. Hewitt on that occasion.

A Yes, sir.

Q In that same connection, do you remember an event

that happened shortly prior to that meeting with regard to the SEC?

A Not that I can recall.

Q Let me show you Government Exhibit 393. I ask you to read that to yourself and tell us if your recollection is refreshed concerning an event on April 2, 1970.

A No, sir.

Q Do you remember discussing in the course of that meeting with Mr. Hewitt and Mr. Boyd the fact that trading had been suspended by the SEC in Select stock for a ten-day period, April 21 to April 11?

A I don't recall that.

THE COURT: Didn't you know about the suspension?

THE WITNESS: Yes.

THE COURT: When did you know about the suspension, when it occurred?

THE WITNESS: I didn't know that it had occurred until 1972, but I can give you my best recollection of that.

Your question, I think, was, does this refresh my recollection? Is that correct?

A I handed you an exhibit which is, is it not, an order suspending trading --

MR. GOLDMAN: Objection. It is not in evidence.

MR. SEGAL: Objection, your Honor.

Q Whatever the document is, your recollection is not refreshed that this purpose of the meeting with Mr. Hewitt on April 6 was to talk about the suspension of trading which you were then in the middle of a ten-day period on?

A Mr. MacDonald, I didn't know what the purpose of the meeting was. I was called to go in there with Joe Boyd and I met him there. He came over from Dallas. I came up from Abilene and I didn't know the purpose of the meeting.

Q In the course of discussions, do you remember learning at some point --

A That may have occurred, yes, sir. I think that's reasonable, but you are asking me for my recollection of it and it has been so long that I can't remember.

Q Do you remember on that occasion the SEC was given a balance sheet certified for Select Enterprises and a letter to shareholders signed by M. S. Knisely?

A Yes, sir. I know that Mr. Boyd gave the SEC some documents at that time.

Q He gave him a certified balance sheet, do you

know?

A I don't recall that specifically, but I am sure he did.

Q Let me show you Exhibit 4-B in evidence. I refer you to the handwriting on the bottom which says Exhibit A. First of all, isn't that the letter to shareholders of March 28, 1970?

A Yes, it is.

Q I would like you to read the second sentence on page 1 of 28-A to yourself. Tell us if your recollection is not refreshed. Was that letter to shareholders, the one you hold in your hand marked Exhibit B, given to Mr. Hewitt on that occasion?

A My memory is not refreshed but I think it did occur.

Q I would like to hand you Government 3-I for identification. I call your attention to the markings on the bottom.

Can you read that Ford exhibit letter there?

A It is Exhibit B.

Q Look at the first part of the memorandum and read it to yourself. Tell us if your recollection is refreshed that the certified balance sheet was given to Mr. Hewitt on the occasion of that meeting as well.

A I feel sure it was, but I don't have any independent recollection of it. I'm sorry.

Q I would like to show you Government Exhibit 30-A for identification, and I direct your attention to the writing on the bottom. It says Exhibit C, does it not?

A Yes, sir.

Q I direct your attention to the middle of the first paragraph on page 3 where my finger indicates, and I ask you to read that sentence to yourself and tell the jury if you have a recollection of a telegram, or rather the copy that you have in your hand of a telegram, from Mr. Marquardt having been given to Mr. Hewitt on that occasion.

A No, sir.

Q Exhibit 30 in evidence is the original of that telegram. Tell the jury --

MR. GOLDMAN: 30-C is not in evidence. May I ask that it be referred to my number and not what it is, please.

MR. MAC DONALD: I thought I said 30-A, which is in evidence.

THE COURT: He said 30-A.

MR. GOLDMAN: I'm sorry.

Q Mr. Ford, when and where did you first touch

that telegram, 30-A?

A April 17 at the SEC hearing.

Q I would like to call your attention, sir, to the memorandum which I have been referring to and to the meeting there reported of April 6, 1970.

A Yes, sir.

Q Is that the occasion when you first touched that telegram?

A It is not.

Q What is your best recollection as to when and where you were when you first saw that telegram?

A April 17.

Q Two weeks later?

THE COURT: Are you distinguishing between "touch" and "seen" and "known"?

THE WITNESS: No, sir.

THE COURT: You didn't know of it on April 6?

THE WITNESS: No, sir.

May I tell you what did happen?

Q Tell us, first of all, who it is addressed to. What is the office address?

A The office address is Select.

Q Is there an address beneath that?

A 1404 North 4th Street, Abilene, Texas, 673-8193.

Q Whose address is that?

A That's my address.

Q Do you have a recollection of having received, perhaps, on the telephone, from Western Union, the content of that message?

A No.

Q Did you receive notice on the telephone before ever seeing the original in writing?

A I didn't see the original in writing.

Q Or have a Western Union operator call you up and give you a message?

A No, sir.

Q Your testimony is that the very first time you learned of that was on April 17, the day when you arrived on a Friday afternoon late with Mr. Boyd?

A Yes, sir.

THE COURT: Whose telephone number is 673-8193?

THE WITNESS: That's my telephone number, Judge.

Q I would like to show you Exhibit 11-A for identification. I refer you to the marking on the bottom that says Exhibit E. I would like to call your attention to the paragraph of the memorandum appearing on the bottom of page 5, that is the memo 28-A appearing on the bottom of page 5. Do you see the sentence that my finger is

indicating (indicating)?

THE COURT: Is 28-A in evidence?

MR. MAC DONALD: Not yet, your Honor.

A Yes. I see where your finger is.

Q Have you read that sentence to yourself and in that connection considered the exhibit which I handed you before that, and is your recollection refreshed that on that occasion a shareholders' list of Select Enterprises was delivered and that exhibit in your hand is the very shareholders' list?

A No. My memory is not refreshed.

Would you like to know what happened?

Q First of all, it is true, is it not, that the exhibit you have in your hand is marked with a stamp on the first page?

A This?

Q Yes.

Can you tell us the manner that it is stamped on the first page?

A Exhibit 14.

Q That's an indication, is it not, of a grand jury exhibit, 14, and you were shown that memorandum of interview on the two occasions of your appearance before the grand jury?

A Yes, sir.

Q Do you remember being asked to read it and to make whatever corrections you thought appropriate with regard to its accuracy in reciting the events of that afternoon?

A I don't believe those are your exact words. I have them here, if you would like to hear them.

Q I had you what has been previously marked --

THE COURT: Mr. Ford has a copy.

THE WITNESS: These are notes, Judge. What page are you talking about?

Q I will hand you the original transcript. I direct your attention to where I am pointing.

THE COURT: Have you looked at the page?

THE WITNESS: Yes, sir.

THE COURT: What were you told about that exhibit?

THE WITNESS: I was told that I was handed the exhibit, and I was told that I had never seen it before and he was going to ask me to step outside and read it, and it was marked, and he says: I will ask you when you return whether or not there is any substantial inaccuracies that you now remember concerning the interview set forth and described in that memorandum.

Q Turn, please, to page 113.

A Yes, sir.

Q Is the answer which appears in the center of that page, which continues over to the following one, the answer you gave to that question.

THE WITNESS: I think he should read it all.

THE COURT: He asked you whether that's the answer. Yes or no?

THE WITNESS: Excuse me?

THE COURT: Is that the answer you gave to that question on that --

THE WITNESS: Those are the answers I gave, yes, sir.

BY MS. MAC DONALD:

Q You made certain corrections to the matter appearing in the six pages, correct? On that first answer you corrected some matter dealing with an individual there, did you not?

A I gave you an example.

Q Don't mention the name, but you did make a correction with respect to that person?

A Yes. As an example of the error, some of the errors, that were in that statement.

Q On page 114, beginning at line 7, you made an

additional correction in respect to the location of the oil and gas field?

A Yes. That was another example.

Q Then you were asked, were you not, beginning at line 18: Are there any other corrections that you now wish to make in that memo or any other obvious errors you would like to identify to the grand jury?

Then I asked you to read the question about your having the memo of the meeting, and you said you did not; is that correct?

A I would like to answer your question but I am a little confused. Would you repeat it once more?

Q Let's go back to step one.

THE COURT: He wants to know whether, after having gone through all of that, you were any other corrections you want to make and asked you whether your answer was "I do not".

THE WITNESS: Where is that, please?

Q I direct your attention to the matter beginning on line 18 of page 114 and continuing through line 13 on page 115.

A Continuing through what, please?

Q The following page, line 13.

A I don't believe it says that. Maybe you would have to point it out to me but I would certainly answer yes if it does.

Q Mr. Ford, is the memo, with the exception of the two corrections which are reported there, to the best of your recollection today substantially accurate in regard to the events that we are discussing?

A No, sir.

Q I would like you to turn to the first page of the memo, please.

Do you have the memo before you? Do you have a recollection that anything on the page --

THE COURT: Ask the question "Is there anything wrong on page 1."

Q Is there anything wrong on page 1?

A Yes, sir.

Q What is that?

A It states that I appeared there to furnish the stockholders' news release and a March 28 certified financial statement. That is not correct. I didn't know -- I went up there to attend a meeting and I didn't present that to the SEC and I didn't go there for that purpose.

Q Are the next two sentences correct?

A The next sentence refers to a copy of a news release attached as Exhibit A.

Q I handed it to you separately. I believe it is in the pile before you.

A I certainly didn't present that that to the SEC --

THE COURT: The question is whether a copy of the news release was there as Exhibit A. You have got the news release in front of you. Is that what was there at that time?

THE WITNESS: I don't remember it.

Q Maybe it would be helpful if you would look at what is Exhibit 4-B in evidence, marked Exhibit A on the bottom and --

A Right. I don't remember this being presented at that time.

MR. GOLDMAN: Your Honor, I don't think there is any testimony that this was presented to the witness. How would he know what --

THE COURT: Please. There is a rule about lawyers making comments before the jury. If you have anything to say, send up a note; otherwise make no comments.

Q I suppose to close this out, Mr. Ford, I would like to show you what is 31 in evidence, marked Exhibit D on the bottom, and ask you, sir, to read that to yourself and familiarize yourself with that document.

Do you have a recollection of such an appraisal having been on the table on the occasion of the April 6, 1970 meeting with Mr. Hewitt?

A Absolutely not.

Q When and where do you first remember having seen a September 1969 Marquardt letter to International Trading Services for the first time?

A I don't recall when I saw it the first time. I think it is probably April 17, or later than that.

Q There are two references to April 17, references to having been by Mr. Boyd's side when those documents were on the table. Is that correct?

A Yes, sir. Probably. I don't know what documents were on the table.

Q You referred, when I asked you about when you first saw the telegram, and you thought you saw it on April 17?

A Yes, sir.

Q And now the document --

A I'll be glad to explain to you how I saw it.

THE COURT: Please don't volunteer.

THE WITNESS: Sorry.

Q Was it on the table at the Securities and Wxchange Commission that you and Mr. Boyd and Hewitt were sitting at as the deposition was being taken?

A Yes, sir.

Q Is that where you saw it?

A I didn't see this particular one, no.

Q You saw --

A That was not on the table.

Q You saw a Xerox copy?

A Yes. Dick Hewitt handed me a Xerox copy of it.

Q When for the first time did you see the original telegram?

A I don't remmeber seeing the original telegram

ever.

Q Would it refresh your recollection that it was on the table in your offices in March of 1972 in the course of the Atoka versus Peterson deposition?

A No, sir.

Q So your best recollection is that you saw it for the first time here in court, in this court, in the last couple of weeks?

A I think so. I don't think I have ever perused this document. I have seen copies of it.

Q I would like to show you Government Exhibit 184 for identification and ask you to read it to yourself and tell us if you have ever seen that before.

A No, sir.

Q Did you ever discuss with anyone th receipt by Select Enterprises of a letter from the Securities and Exchange Commission inquiring into their affairs in mid-February 1970.

Q I don't recall. I think --

MR. SEGAL: Objection.

Q Are you about to give us a further recollection that you were describing, I think?

A Well, I know at one time I thought --

MR. SEGAL: Objection.

THE COURT: Overruled.

A At one time I thought that there had been some inquiry and it might have been in the Peterson deposition, going back to 1972. I am not sure, but I was mistaken as to dates, as to time there and I am not sure that I recall it even then. I don't know when, where, under what circumstances it might have been.

I got a lot of materials from the Government in the SEC hearing in New York and 5they sent me some documents which referred to that.

Q Do you know Jame E. Simms, Mr. Ford?

A No.

Q Do you know the attorney in charge of the Houston office of the Securities and Exchange Commission?

You know there is a Houston office of the SEC?

A Right.

Q Do you have a recollection in February of 1970 discussing with Mr. Simms an inquiry about the affairs of Select Enterprises?

A I may have. I don't remember. I don't recall at this time.

Q I would like to direct your attention to February 17, 1970. That is the day on which you told us you prepared the contract of sale for Select Enterprises

to acquire California land in certain minerals. Do you recall that contract?

A True.

Q And you met at your offices that day with Mr. Goodloe, Mr. Brinlee and Mrs. Vinson to discuss that contract?

A And Mr. Boyd, yes.

Q And Mr. Boyd as well?

A No, no, no, Boyd wasn't there at that meeting and that contract wasn't signed. The only people there were Brinlee and Vinson and Goodloe at that meeting.

Q When you say the contract wasn't signed, you mean it wasn't signed by anyone on behalf of Select?

A True.

Q Do you recall any discussion amongst the parties with respect to whether or not Mr. Goodloe might sign it on behalf of Select?

A No, sir.

Q Do you recall any discussion in respect of the letter dated March 2 or 3, 1970, on your letterhead, that Mr. Goodloe signed on behalf of Select Enterprise?

MR. STOKAMER: Objection.

THE COURT: Overruled.

Q Do you know the letter I am referring to?

A No, I don't recall.

Q It is the one --

A I know what you are referring to, yes.

Q The one to Mr. Maxson, Select Enterprises, by E. D. Goodloe.

A What's your question?

Q Whether or not you recall now having a discussion with Mr. Goodloe in or about March as to whether or not he was authorized to sign on behalf of Select Enterprises?

A I think that is the reason he didn't sign the contract, because he wasn't authorized to. But, he did discuss with me at that time or somewhere near that time that he had put his properties into Select and had deeded them to Select and that he was interested in getting the other people to ahead and do the same as he had done.

Q You say in or about that time, Mr. Ford. You are referring to the letter of March 2 or 3, 1970, to Mr. Maxson?

A Sure.

THE COURT: We will take a short recess at this time.

(Recess.)

(Court Exhibit 34 marked.)

THE COURT: In the absence of the jury Mr. Broderick has, on behalf of the defendant Gardner, requested that in the event Michael Gardner testifies the government should be precluded from cross-examining the defendant Gardner about his two prior criminal convictions, the first in the spring of 1973 where he was convicted of a securities fraud and sentenced in the federal court, and the second in April of 1974 when he was convicted in a stollen security case and sentenced, both cases being entitled United States v. Gardner.

The request was made under the authority of United States v. Puco decided in the Second Circuit Court of Appeals in a narcotics case.

The Court rules that the two convictions referred to are so closely related to the issues in this present type of case and would be significant on the issue of motive and intent of the defendant and also bear on his credibility to such a degree, that the government should not be precluded.

I so rule.

(Recess)

(Jury in box)

BY MR. MAC DONALD:

Q I place before you Government Exhibits 162 and 169 in evidence. I ask you, for the jury's benefit, to tell them that those are, are they not, two oil and gas transfer documents which you prepared.

A Yes, sir.

Q One of them -- and you can refer to that -- transfers certain interest to Select Enterprises. Which one is that? Refer to the tag.

A That is 162.

Q And the transferor is Mr. Goodloe?

A Yes.

Q That document was typed and the date inserted. The date in January is typed in or is it handwritten?

A It is handwritten in.

Q The other document has the typed date.

A Yes.

Q That document transfers what interest from what person to what person?

A It transfers an overriding royalty interest to Lloyd London.

Q He is the man who was connected with the Cisco Bank, Cisco, Texas?

A Yes.

Q A friend of yours?

A Yes.

Q Tell us, please, the circumstances surrounding your having prepared that document transferring to Mr. London certain interests on those oil and gas leases. Did you talk to Mr. London about it?

A No, sir.

Q Who directed you to transfer to him the matter described therein?

A Ed Goodloe.

Q Did there come a time when you spoke to Mr. Goodloe about his receipt of that overriding royalty interest in the oil and gas properties in the county?

A I may have. I can't recall.

Q Well, what is your earliest recollection of discussions with Mr. London on the subject of the oil and gas interests reflected in those documents?

A I don't have any recollection of it whatever.

Q Of any discussion of it with him?

A Yes, sir.

Q You told the jury you were called on the Sisco Bank's suit or Mr. London's suit against them in respect of that property?

A Yes, sir.

Q The Sisco Bank didn't lend the money to the Petersons, did it?

A I think so.

Q Is your recollection refreshed that Mr. London personally brought that suit and it was London versus Zodiac Enterprises and others?

A I don't recall.

Q Do you remember on direct examination saying that the "et al" after "Zodiac Enterprises", was a reference to the Petersons and that it was L. London who was the plaintiff in the action?

A I think it was the First National Bank in Sisco, but I am not sure.

THE COURT: He asked you whether you said that

on direct examination. That was the question.

THE WITNESS: I don't know whether I said it or not but I have.

Q Is it advantageous to the purchaser of an oil and gas lease to record his lease quickly after he receives it from the person who signs it and gives it to him, much like it is in real property?

A I think there is a major difference, Mr. MacDonald and if I --

THE COURT: He wants to know whether it is an advantage. We don't need any further information except whether it is an advantage, yes or no.

MR. GOLDMAN: Your Honor, excuse me. The question was "much like" and I think that is not necessarily saying is there an advantage.

THE COURT: I am ruling it the other way. I don't want these open-ended questions and long answers.

A There could be an advantage, Mr. MacDonald.

Q The Select Enterprises deed in your hand was not recorded until when, sir?

A Until June.

Q Of 1 970?

A Yes, sir.

Q And your opinion letter dated January 1970 --

A January 26.

Q -- recommends prompt recordation, does it not?

A It doesn't use the word "prompt", I believe, but it does ay you should record the assignment from E. D. Goodloe to Select Enterprises in Comanche County, Texas.

Q I would like to direct your attention to the month of January 1970 and specifically to the meeting that you described to the jury that you attended with Mr. Weber, Mr. Boyd and Mr. Goodloe concerning the transfer of properties into a shell corporation.

Do you recall that meeting?

MR. GOLDMAN: Objection.

A No, sir.

MR. GOLDMAN: There was no such testimony.

Q Do you recall attending a meeting in Midland, Texas?

THE COURT: Mr. Goldman, I ask you, and I hope for the last time, not to comment on what there is or is not before the jury. You may assert a legal objection. What you have said is not a legal objection. It is your evidence and we are not interested in your evidence.

Your objection is overruled.

Put the question again, please.

Q Calling your attention to January of 1970, did

you attend a meeting with Mr. Weber and Mr. Boyd and Mr. Goodloe in Midland, Texas?

A Yes, sir.

MR. SEGAL: Objection.

THE COURT: Overruled.

Q In the course of that meeting, was the subject of transferring properties Goodloe controlled discussed?

A Yes.

Q Did that property include oil and gas leases as well as the mica mines in --

A I think it included only the oil and gas leases at that meeting.

Q Would you tell us who was discussing receiving those properties?

A Joe Boyd and his corporation.

Q Was that described in any fashion as being a shell corporation recently reactivated?

A No, sir.

Q What description do you recall and can you report to us concerning who was to acquire the oil and gas leases?

A Select Enterprises was to acquire the oil and gas leases and, as I recall the conversation dealt only with that.

Q Can you report to us anything in regard to the description of Select Enterprises?

A It was a Nevada corporation.

MR. SEGAL: Objection.

THE COURT: Overruled.

A (Continuing) In which there are or were other properties being accumulated, other properties were being conveyed to it.

Q What would be given in exchange for the oil and gas leases?

A Stock in the corporation, restricted stock.

Q Do you recall anyth ing further on that same subject?

A Yes, sir. A short time after the meeting began there, Mr. Goodloe made the decision to convey the oil and gas leases to Select and they wanted to do it right then and there; they wanted to have a contract right then and there.

I told them that I would be happy to give him a contract if they would get me a public stenographer that could take dictation and I would draw the contract, whereupon there was discussion about that point and then Mr. Weber said, "Well, I can take dictation," and I said, "Okay".

So, we went into the other room and I proceeded to dictate the contract to Selwyn Weber.

Q Was it prepared and signed on that occasion?

A Yes, sir.

Q Did you ever see the matter that Mr. Weber prepared?

A No, sir, except at probably the grand jury hearing.

Q Are you referring to the contract which we previously showed you on direct examination governing the conveyance of oil and gas leases, which you said you did not author?

A I am not referring to that. I don't know which one. There were -- I think there were two contracts and then the conveyances.

Q I show you Government Exhibit 35.

A Yes, sir.

Q That is marked for identification. Is that the document you are referring to?

A No, sir.

Q Have you seen an additional contract?

A It seems to me I recall that you had another contract at the grand jury proceedings that you asked me to look at and I had, dealing with the same subject matter.

Q Oil and gas leases?

A Yes, sir.

Q Well, we will undertake to locate that, Mr. Ford.

A Thank you.

Q After the meeting that you have described to us, there came a time and after you prepared the assignment which actually transferred the oil and gas leases into Select Enterprises, did you have a further conversation with Mr. Goodloe and Mr. Boyd concerning that transaction?

A I don't believe so.

Q Did you have a conversation with Mr. Goodloe in the presence of Mr. Boyd in which you reported that Lloyd London had told that he had funded, that is, his bank, had provided $18,000 for the purchase of those leases from Mr. Rhodes and that that loan entitled that bank to a claim against the oil and gas leases?

MR. STOKAMER: Objection; relevance.

THE COURT: Overruled.

A I don't recall that conversation. It may have happened. Right now -- I don't know. You are talking about a conversation between Boyd and Goodloe and myself immediately after that meeting in Midland, correct?

Q I am talking about a conversation after the conveyancing, when the conveyancing occurred, in which you reported to Mr. Boyd and Mr. Goodloe that there was a problem in respect of a deed signed by Goodloe only since the bank had lent some money on those oil and gas leases and the Petersons might have an interest.

Do you recall such a conversation?

A No, sir.

Q Do you recall that a debt-free transfer couldn't be made in respect of that because of the bank's loan of $18,000?

A I don't recall that conversation.

Q I would like to direct your attenion to the occasion of your deposition in March of 1972 and ask if you were asked the following question and answer beginning on line 29 and carrying over to page 30.

Page 29, line 25:

"Q You have previously indicated that you knew the Petersons had some interest in this. Did you make any inquiry of Mr. Goodloe as to why the co n veyance wa being signed only by him and why the Petersons were not executing the conveyance?

"A Not at that time. I talked to him about it later. At this -- well, shortly after this

instrument was drawn, I talked to him and I think in the presence of Joe Boyd and I said, 'You know you borrowed $18,000 in the Sisco Bank on a note which is a purchase money against -- using purchase money for the purchase of these leases' and the question came up as to whether or not the leases were being conveyed to Select free and clear or were there any debts against those leases and that was the reason that I brought it up, because I knew there was $18,000 which was borrowed from the First National Bank of Sisco."

Do you recall giving that answer to that question on that occasion?

A Yes.

THE COURT: Is that the fact? Was your answer the fact?

THE WITNESS: No, not entirely.

THE COURT: What was wrong with your answer?

THE WITNESS: This, this answer came after I had interviewed the Petersons with reference to the proposed lawsuit against Select. The information in the deposition comes after, for the first time, I learned about that from the Petersons.

THE COURT: Well, you are talking about the

timing of the conversation. Was the substance of the answer correct?

THE WITNESS: Yes.

Q I direct your attention to the uses to which your opinion letters were put.

Do you recall on direct examination saying that you delivered the two letters to Mr. Goodloe only and that was the last you saw of them, including the carbon copies, until recently? Do you recall giving that testimony on direct examination?

A I am not sure that that is the entire --

THE COURT: Well, ask the question again straight out.

MR. MacDONALD: Yes, sir.

Q The original ribbon copy of the opinion letter you delivered to Mr. Goodloe, correct?

A True.

Q Did you deliver some carbon or carbons also at the same time?

A Probably.

Q Did you deliver to Mr. Wayne Barnett in March of 1970 some other copy of that opinion leter for some purpose of his?

A They were delivered prior to March 1970.

Q To Mr. Barnett?

A Yes.

Q How soon prior to March 1970 did you deliver your opinion letter?

A I don't recall right now, but I think it was early in February.

Q It was fo the purpose of inducing Mr. Barnett to prepare a balance sheet for Select Enterprises?

MR. SEGAL: Objection.

THE COURT: Well, you can rephrase the question in connection with preparing, rather than for the purpose of preparing.

MR. MacDONALD: Yes, sir.

Q Was it in connection with his preparation of balance sheets for Select Enterprises, Incorporated?

A Yes. Pro forma bal ance sheet.

Q Do you have a copy of the oil and gas opinion letter before you, Defendant's Exhibit Ford Exhibit F? Is there any disclosure in that document in respect of Lloyd London's bank having an $18,000 loan with regard to those oil and gas leases?

A No, sir.

Q With respect to the opinion letter concerning the mica deposits in New Mexico, is there any disclosure

in that document concerning a mortgage which C. A. Morris & Company had filed of record against the mica mine claims and the properties there?

MR. GOLDMAN: Objection.

THE COURT: The document speaks for itself but the witness may be asked to confirm that there is no reference to a mortgage in there, if that be the fact.

Q Can you do that without looking at the document?

A Yes, sir.

Q You know, do you not, that there is no reference to a mortgage --

A Absolutely.

Q -- in Rio Arriba County.

A I think you had the same information.

THE COURT: Your two opinion letters, the one does not mention an $18,000 loan and the other doesn't mention a mortgage? Is that where we are now?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q In con nection with delivering the opinion letters to Mr. Barnett, would you tell the jury if you answered all questions that were put to you with respect to your opinions stated in those letters?

A No questions were put to me. The opinion letters came from my own background in writing opinion letters in the past. No one asked me what to put in there. I put it in there because of the information in the documents that I had in front of me and at the time there wasn't any kind of market indicated or otherwise of record in Comanche County, Texas, involving the Petersons. They had no interests in these leases.

Q Do you recall Mr. Barnett asking you any questions about the matters covered in those opinions which you refused to answer?

A No, sir.

Q Do you recall being asked any questions about your opinions as set forth in those letters, by Mr. Barnett?

A No, sir.

Q Do you recall being asked to identify who, beyond Joe L. Brown, owned an overriding royalty interest in the properties?

A I don't remember that.

Q Do you remember that it does not identify anybody but Mr. Brown as the owner of the overriding royalty interest? You do recall that, don't you?

A No, sir, that is not correct.

THE COURT: Who else is identified other than Mr. Brown?

THE WITNESS: The opinion says, and I quote, Joe Brown et al.

Q And you recall being asked by Mr. Barneet who was included in the et al?

A I don't recall. He may have asked me. I don't recall.

Q Is it the fact that Mr. Lloyd London was the person referred to in that expression?

A I don't recall the question being asked.

THE COURT: He is asking you now whether the "et al" is to be exchanged for Mr. London.

Is that who you were referring to when you called him "et al", or was it somebody else?

THE WITNESS: I don't remember. It has been five years, your Honor, and I don't recall.

Q MR. Brown was the same person who authored or at least signed the valuation data wh ich you said was not originally attached to your opinion letter, is that correct?

A Correct.

Q And Mr. Brown was an owner of the property being transferred, was he not?

A No, sir.

Q An overriding royalty interest is a form of ownership, isn't it?

A Yes.

Q And Mr. Brown was the only person identified as being the overriding royalty holder, correct?

A Correct.

Q So, he was an owner of sorts in the property being transferred?

A Yes. He was an owner of overriding roylaty interests.

Q Do you have any recollection of discussion with Mr. Barnett of that fact in connection with delivering to him the opinion letter concerning the oil and gas leases?

A I am sorry. I don't.

Q Do you have any recollection of discussing with Mr. Barnett the valuation itself signed by Mr. Brown?

A No.

Q Do you have any recollection of discussing with Mr. Boyd the attachment of those valuation papers to your opinion letter as submitted to the SEC?

A No, sir.

Q Do you remember seeing them in that fashion on April 17 when you were there with Mr. Boyd?

A No, sir.

Q Did you give to Mr. Barnett an oral title opinion in respect of the California property?

A No, sir.

Q Were you requested to do so?

A No, sir.

Q Do you have any recollection of discussing that subject with him?

A No, sir.

Q On or about March 26 did you have occasion to be present with Mr. Barnett when he received payment from Mr. Boyd of $500, five $100 bills in your offices?

A I don't think that happened in my office and I wasn't present.

Q Do you have some information to report to us as to the location of the payment?

A Only from the records of the SEC, which show that --

MR. SEGAL: Objection.

Q Are you referring to a conversation which occurred during Mr. Barnett's deposition which is reported in the transcript while you were in attendance?

A No. Mr. MacDonald, the evidence in this trial is that money was paid in Dallas at the Holiday Inn.

Q I thought you were referring to something that you read in the transcript, Mr. Ford.

I would like to direct your attention, sir, to the Barnett deposition and ask if you have a recollection during that day of Mr. Barnett's consulting with you about the receipt of $500 in your offices at or about the time of the board meeting, from Mr. Boyd?

A No, sir.

Q Do you remember handing Mr. Barnett the copy of the telegram from Mr. Marquardt which we have referred to earlier today in your offices in that same time frame?

A I did not hand it to him. I didn't know about it.

THE COURT: Is this a convenient stopping place or do you need to finish the line?

MR. MacDONALD: It is a convenient stopping place, your Honor.

THE COURT: Ladies and gentlemen, we will stand in recess on this trial until Tuesday morn ing at 10 o'clock, Tuesday, October 14.

I hope you all have a pleasant holiday. Be sure that nobody winds up with any ailments and come back refreshed and ready to take charge again on Tuesday morning.

(Jury in box.)

R O B E R T E. F O R D , resumed.

CROSS EXAMINATION (Continued)

BY MR. MacDONALD:

Q Mr. Ford, it is a fact, is it not, that on April 13th, a Monday, you traveled to California with two different sets of deeds for recording at the Imperial County and Riverside County Court Houses?

A Yes.

Q Each set ended with a deeed into Select Enterprises which had previously been signed in your offices by Mr. Brinlee and Mrs. Vinson?

A Yes, sir.

Q It is also a fact that each set also included a quitclaim deed from Ace Associates into Brinlee and Vinson?

A That's correct.

Q I place before you Government Exhibits 138 and 147. They are, are they not, respectively, the Riverside and Imperial deeds which, on your direct examination, you said were improperly notarized in the first instance?

A Yes, sir.

Q It is also true that in the Riverside County Court House case you had a third deed by the name of C. M.

Rach into Ace Associates?

A Yes, sir.

Q It is true, is it not, that on that April 13th when you arrived at the airport you met the notary, Williams, and he signed in your presence the acknowledgments for the corporation Ace Associates, Inc. on both of those exhibits?

A Yes, sir.

Q Had you previously spoken to him yourself in anticipation of that meeting or had that been arranged by another?

A I'm not sure, Mr. MacDonald, but I think that I made a call to the man in California. He was listed as a notary there. He had already notarized the deed but it was not a corporate acknowledgment.

Mr. Harvey you met because someone else had made an appointment with respect to him?

A That's right.

Q You are not sure whether you made the appointment directl y with Williams or not; is that correct?

A I think I did. I'm not sure.

Q It is true, is it not, that you prepared the two corporate acknowledgments which appear on those exhibits on the Texas form?

A Yes.

Q And you stapled them over the California acknowledgments for Individuals transferring land?

A Yes.

Q The original representation on the California deed was simply that Mr. Davidson and Mr. Kime had appeared before Williams and each acknowledged that it was their respective signature on the deed?

A Yes.

Q And the additional representation which you prepared added the fact that they also acknowledged that they were officers of Ace Associates and that their signatures constituted an arrangement of that corporation?

A Yes, sir.

Q You had not seen any minutes or corporate resolutions for that Arizona corporation, Ace Associates, Inc., evidencing that authority, had you?

A No, sir.

Q In fact, you had no direct knowledge that the recitations were true; is that correct?

A That's correct.

Q It is also true that you had not asked Mr. Brinlee if he was a convicted felon?

A That's correct.

Q Nor had you asked Mr. Davidson if he was a convicted felon?

A No, sir. I didn't ask that question.

Q It is also the fact, is it not, Mr. Ford -- and answer yes or no, if you can -- that you inserted the original date of February 21, 1970 onto that Texas form and not the actual date six weeks later when Mr. Williams signed it in your presence, April 13, 1970?

A I don't think I did.

Q Would you look at it and see if it is typed in the same style --

A It appears to be, yes, sir.

Q It is also true, is it not, that the Texas format recites that the notary is stating:

"Given under my hand and seal in blank day of blank AD, 19 blank"?

A Yes, sir.

Q It is also a fact, is it not, that you made that trip to record those deeds on the instructions of Mr. Boyd who had told you in substance that he had promised Barnett that he would have them recorded?

A I don't recall that exactly, sir.

Q Isn't it the fact, Mr. Ford, that you discussed with Mr. Boyd doing a title search while you were in

California?

A No, sir.

Q And not in anticipation of any SEC inquiry on that subject?

A No, sir.

Q It is a fact, is it not, that no title insurance policy had been obtained and that no share in Select stock had been given to the sellers in respect of these deeds you were recording?

A I think that's true.

May I elucidate a little bit on that?

B3 Q I simply want you to acknowledge that there had been no closing in the customary form, no shares of stock had been given to the seller, and no title insurance policy had come to your attention, you had not seen an insurance company's promise to pay if the title turned out to be bad.

MR. GOLDMAN: Objection to form, your Honor.

THE COURT: Overruled.

A The information set out in that letter agreement was between W. L. Brinlee and Select Enterprises under date of March 2nd, 1970.

Q That was not a title insurance policy, was it?

A It was an agreement whereby the deeds were

delivered to Select and that the stock would be delivered to Brinlee and Vinson when the title policy had been furnished by them.

Q It is true, is it not, that Only Mr. Brinlee and Mrs. Vinson signed that letter and they were not an insurance company?

A That's true.

Q It is also true that there had been no closing in the customary fashion, no purchase price had been delivered to the seller?

MR. GOLDMAN: Objection. Two questions in one.

THE COURT: I overrule that objection.

A Mr. MacDonald, I think that instrument has to speak for itself. I can tell you what it says.

Q I'm asking you for the ultimate fact.

You did not see the delivery to Mr. Brinlee or Mrs. Vinson of a single share of Select stock?

A I did not.

Q It is alsO true that on the occasion of your California trip you limited your investigations to talking to a farmer named Brown whom you met standing by the roadside and to this man Harvey?

A Yes, sir.

Q It is also true that Harvey only admitted to you that he had a connection with that C. M. Rach individual who signed the first deed on the Riverside County and that you had no direct knowledge of any connection that Harvey had with Ace Associates or Brinlee or Vinson?

MR. GOLDMAN: Objected to.

THE COURT: Overruled.

A That's not true.

Q Turn to page 150 of M.r Boyd's April 17, 1970 deposition. I direct your attention to the question beginning at line 2.

Do you have that page located?

Q (Reading:)

"OFFICER HEWITT: What is your understanding of Mr. Harvey's connection with Ace Associates?

"MR. FORD: I don't know what that connection is.

"OFFICER HEWITT: Did he indicate that he represented them?

"MR. FORD: He told me he had acquired title to most of this land and had had the land deeded to Mr. Rach from Perez, and the chain of title went from Rach on to Ace Associates and down, as we

discussed.

"OFFICER HEWITT: Right through Brinlee and Vinson. Who gave you Mr. Harvey's name to contact On the West Coast?

"MR. FORD: Ed Goodloe."

Was that the fact, Mr. Ford?

A Yes, sir.

Q It is also true, is it not, that when you returned to Texas from your California trip and appeared on this Friday afternoon, April 17th, with Mr. Boyd, you did not tell the SEC that you had not done any record search at the County Court Houses but rather you represented that you had some information from running some records and you had a chain of title?

MR. GOLDMAN: Objection as to form.

THE COURT: Overruled.

Is that what you told him?

A No. It is not what I told him.

Q Turn to page 128, line 5:

"OFFICER HEWITT: Okay. Did you ascertain when you were out there that they were the previous owners? Did you try to run any deed on this property?

"MR. FORD: I didn't have time to run all the

records. I have some information coming. We have a chain of title on that. It comes from a Spanish land grant."

Tell the jury what records you did run and that records you didn't have time to run on that occasion of that trip, Mr. Ford?

A Yes, sir.

I didn't run any of the records. My statement is that I didn't run all the records. I meant that I didn't have time to run the records. There is no way on earch anybody could run all the records on that property within a short period of time. I was there only to record the deed, as I did. Besides that, we had a title policy coming. I was not interested in that. I was not a California attorney. I am not expert --

THE COURT: Read the question to him.

(Record read.)

THE COURT: Confine yourself to the question.

A (Continuing) I didn't have time to run all the records.

THE COURT: What records did you run and what didn't you run?

THE WITNESS: I did not run any records.

THE COURT: None?

BY MR. MacDONALD:

Q Directing your attention to line 11:

"OFFICER HEWITT: Then the prev ious owner was Vinson Investment and Brinlee?

"MR. FORD: Right.

"OFFICER HEWITT: Do you have the owner prior to Vinson and Brinlee?

"MR. FORD: Yes, I do.

"OFFICER HEWITT: Good.

"MR. FORD: The Spanish land grant was recorded in 1846 and the heir of that was Manuel Lopez Perez, and then he conveyed the property to a gentleman by the name of Rach, and he conveyed it to Ace Associates.

"OFFICER HEWITT: All right.

"MR. FORD: Ace Associates conveyed it to Brinlee and Vinson Investment Company.

"OFFICER HEWITT: And they then conveyed to --

"MR. FORD: Was this Rach to Ace to Brinlee to Select in the past year?

"OFFICER HEWITT: Yes."

Your information with respect to those representations stemmed exclusively from what Harvey had told you, correct?

A No, sir. It came from the deeds which I had and which I recorded.

First of all, I had a copy of the deed from Rach to Ace Associates. I had the deed from Ace Associates to Brinlee and Vinson, and I had the deeds from Brinlee and Vinson to Select. That is the chain of title, and I had that in my possession.

Q Prior to Rach, that is the Spanish land grant and the man named Manuel Lopez Perez, you had not examined any such recorded deed?

A No. I had notes from Mr Harvey and I gave those notes to Mr. Hewitt, and he asked me to read a little further, and I was referring to the note that I had taken from Mr. Harvey.

Q Mr. Harvey is and was a convicted felon?

MR. GOLDMAN: Objection. I move for a mistrial.

THE COURT: Motion denied.

The objection to the identity of the man seems to me to be misplaced. That's overruled.

Was he, to your knowledge, at that time, a convicted felon?

A No, sir.

Q I direct your attention to April 22nd, 1970,

one week later.

THE COURT: What did you say "No, sir" to? That he was not a convicted felon or you didn't know it?

THE WITNESS: I didn't know it. If he is, I still don't know it. I have no knowledge of the man's criminal record whatever. That was the first time I met him and I still don't know if he is a convicted felon. He may be but I don't know it.

(Continued on next page.)

Q Directing your attention to the one week later, April 22, 1970, on that day you attended, once again, at the SEC with Ed Goodloe when his deposition was taken, did you not?

A Yes, sir.

Q On that occasion you were shown as an exhibit, together with Mr. Goodloe, copies of the minutes of the board of directors' meeting dated March 26, 1970 at the Ford Building in Abilene, were you not?

A I think that is correct. I'm not sure.

Q I have handed you Government Exhibit 9-E. I would like you to address yourself, please, to the next to the last page in that exhibit to the paragraph that relates to the California land. Have you read that paragraph?

A Yes.

Q I have also handed you Government Exhibit 327 and I direct your attention to page 40 of that transcript. Let me substitute for 9-E, 9-C.

My question is this: Do you see the markings on 9-C? Is that not the Goodloe Exhibit 5 identified on that page of the transcript in your presence in Mr. Goodloe's presence?

A It appears to be that.

Q Remain for the moment at page 40 and immediately following the identification of that exhibit, wasn't the question put to you calling your attention to the next to the last page of the board of directors minutes in respect of the issuance of stock to Brinlee and Vinson concerning the California land?

MR. GOLDMAN: Objection. You mean Mr. Goodloe?

MR. MAC DONALD: I will accede to the correction.

Q Wasn't it brought to Mr. Goodloe's attention, and his attention was directed, to that portion of the minutes of that meeting -- the question begins on line 13 and runs through line 18?

A Yes, sir, I see it.

Q Would you please turn to page 41. I would like you to look at the question beginning at line 17:

"Q That this is your deal and was your deal from the beginning to the end?"

That was a question put to Mr. Goodloe.

"MR. FORD: Goodloe is right. The contract was made and entered into and they came to my office and then the board met and, as far as we are concerned, the total amount of stock was issued for the total land."

Did you make that response on that occasion, Mr. Ford?

MR. GOLDMAN: May we read the entire answer, your Honor?

THE COURT: That's not necessary. He wants to know whether that response was made.

You may bring out anything further you think is appropriate.

A Yes, sir. I think it was.

Q I would like you to turn to the portion of 9-E before you which bears the number 11 in the lower right-hand corner. Do you see the small writings on the right-hand corner there?

A (Pause)

Q I would like to specifically direct your attention to the middle of the final paragraph on that page where your name appears.

A Yes, sir.

Q Do you have that sentence in mind?

A Yes, sir.

Q It was the fact, was it not, Mr. Ford, that on the occasion of the board of directors meeting you rendered a report concerning the title to the California property and you advised the board that the land was part of a Spanish land grant and that there was a chain of title from the Spanish land grant to the company? Yes or no.

A No. May I explain it?

Q I would like you to tell the jury if you had occasion to correct the minutes in any respect throughout the entire time of the Goodloe deposition in this regard.

MR. GOLDMAN: Objection.

THE COURT: Overruled.

A I did not correct them, if that's what you want.

Q I would like to direct your attention now to another week later, April 31, 1970. I ask if you had occasion to appear on that date for the third time at a formal deposition and a fourth time at the SEC with respect to Select Enterprise.

A Is that April 30 or 31st?

Q April 31, with Mr. Barnett.

A Yes, sir.

Q I direct your attention to page 37 of Government Exhibit 22 in evidence. My preliminary question to you is this:

It is a fact, is it not -- and please answer yes or no -- that you once told Mr. Barnett that Brinlee and Vinson's warranty deed appeared crazy to you?

A I said what is in the deposition here and it is not what you said. If you care to read it to the jury --

Q Page 37 --

THE COURT: Mr. Ford, let me just briefly remind you that it is not the function of the witness either to instruct a counsel who is cross-examining him or to lecture anybody. You are here just to respond to questions, the same as any other witness when you take the stand. I think you must understand that because you are a lawyer. Don't make any unnecessary remarks not called for by any question that is put before you.

You may proceed.

Q Line 6, page 37, question to Mr. Barnett -- and you were seated by his side, correct?

A Yes.

Q (Reading:)

"Q Did you make any further inquiries besides the warranty deeds?

"A Let me think. Well, yes. I believe I asked -- I'm not -- I believe I asked Bob what he thought of this and he said, 'Well, I think the guy is crazy if he gives a warranty deed on property of this magnitude.'

"Q You are talking about Bob Ford now?

"A Yes."

Is that the fact, Mr. Ford?

A Yes, sir.

Q Was it also the fact that you withheld that

opinion from the board of directors on March 26 during the course of your reporting to them a chain of title on the California property?

A No, sir.

Q I would like to direct your attention to last Friday, sir. Do you remember on direct examination testifying about the circumstances of your deposition on March 14, 1972 in your offices in the Atoka v. Peterson lawsuit?

A Yes, sir, I remember.

Q You also testified that you were not present for the testimony of other witnesses because the lawyer, Jerry Jordan, had invoked the rule excluding witnesses and had not waived it and permitted you to sit in, true?

MR. GOLDMAN: Objection.

THE COURT: You are making an objection?

MR. GOLDMAN: Yes, sir.

THE COURT: Overruled.

Q Is that correct?

A I don't think that's entirely correct.

THE COURT: How much of it is correct?

THE WITNESS: The part that is correct is that I did not sit in on the deposition when Wayne Barnett's deposition was taken on that occasion. I don't know

whether they invoked -- I think they may have invoked the rule. I'm not sure.

Q Page 1838 of the trial transcript in this case, beginning at line 18:

"Q Were you present when Mr. Barnett testified?

"A No, sir. I was a witness in the case apparently and they had invoked the rule and I stayed out.

"Q What rule?

"A In Texas we have a provision whereby the witnesses stay outside of the hearing of the testimony of any other witnesses in a case even when a deposition is being taken.

"Q Is that for witnesses or only people who are not actually parties to the suit?

"A Witnesses. I was not a party to that lawsuit."

On cross-examination 1852, line 3:

"Q Do you recall whether or not in the course of that morning two other additional depositions were taken, that of Mr. Rhodes, the original assignor of the oil and gas leases, and that of Mr. Brown, a person who owned an overriding royalty interest?

"A I don't recall the depositions of Rhodes or Brown."

I hand you Government Exhibit 430 for

identification.

MR. GOLDMAN: May I see it?

MR. MAC DONALD: I have no copy. Counsel is entitled to look at the one the witness has.

3/4

(The following Court exhibits were marked:)

xx Exhibit 36: Communication from Joseph Erhlich re Government Exhibit 92.

Exhibit 37: Motion by defendant Rappaport for judgment of acquittal.

Exhibit 38: Government memorandum in oppositon to Rappaport motion for acquittal.

Exhibit 39: Motion by Roger Bissett for judgment of acquittal.

xx Exhibit 40: Government memorandum in opposition to Bissett for acquittal.

THE COURT: I don't think he should be interrupted in his cross-examination at this time. You will have an opportunity to see it if you want anything on redirect examination.

Q Mr. Ford, it is a fact, is it not, that at Mr. Rhodes' deposition on the beginning of that morning you and other witnsses were present?

A No, sir.

Q Turn to page 33 in the upper right-hand corner.

Do you see that? Is your recollection refreshed that you and Mr. Brown were present on the occasion of Mr. Rhodes' deposition?

A No, sir.

Q Turn to page 15, line 4. It is a fact, is it not, that you actually cut in on an answer in the course of that deposition and requested an off the record discussion?

A No, sir.

Q It is a fact, is it not, that during the course of that day you were permitted to actually attend and participate, and that during Mr. Barnett's deposition you sat to his right?

A I did not.

Q I have handed you Government Exhibit 176 in evidence, that being your own deposition, and the time of that testimony, March 14, 1972.

A Yes, sir.

Q Turn to page 5, line 6. Were you asked at the beginning, relatively speaking, of that testimony:

"Q Directing your attention to the fall of 1969 to a group of oil and gas leases which is commonly known as the Southwest Duster 2700-acre lease block in Comanche County, Texas, I ask you whether or not you were familiar with this group of oil and gas leases?

"A Yes. When you say "familiar', that's a pretty broad term.

"Q Describe your contact with that, if you would.

"A Well, the first time I knew about the Southwest Duster property was when Joe Brown came to my office and was conferencing with Ed Goodloe.

"Q Can you approximate a date on that?

"A I would say October and possibly November of 1969.

"Q Did you take part in this conference?

"A No, I didn't.

"Q Did Mr. Goodloe subsequently hire you in connection with doing work in connection with this lease block?"

MR. STOKAMER: Your Honor, I object.

THE COURT: Objection overruled.

Q (Reading:)

"A No, he didn't. Select Enterprises hired me to make a title opinion on these leases which I did. That was in March of 1970."

My question to you, Mr. Ford, is that you volunteered your recollection without any references to January, 1970 as being March, did you not?

A Yes.

Q Turn to page 6, please. Mr. Jordan continued

by asking you with reference to your answer of --

MR. GOLDMAN: Objection to form, this line of questioning.

THE COURT: Leave out the connecting phrase. Start again.

Q Page 6, line 2:

"Q Is that then the first legal work that you actually did in connection with these oil and gas leases?

"A Yes, sir.

"Q Do you have a copy of that title opinion?

"A No, sir, I don't.

"Q What was Select Enterprises?

"A Well, formerly it was a Nevada corporation which was organized in 1915. It was known as Candelaria Goldfield Mining Company. It was organized from the information I have seen -- I don't have those documents, but I saw them from a report of the Secretary of State of Nevada in 1915.

"Q Who brought this corporation to your attention?

"A Ed Goodloe and Joe Boyd.

"Q Can you give me a date when that would have happened?

"A That would have been in January or February of 1970."

It is a fact, is it not, that when you were next and later asked to describe that January meeting you omitted any mention of any work until the SEC work for Select which began in February, 1970?

A I missed the first part of your question.

Q It is a fact, is it not, that when you were later asked in the course of that deposition to describe that January meeting, you and your role in it, you omitted any mention of any work for Select until the SEC in February of 1970?

MR. GOLDMAN: Objection to form.

THE COURT: Break it up into two parts: First, the omission; secondly, whether the omission was corrected at a later time.

Q You were asked, were you not, to describe your work in connection with that meeting with Goodloe and Boyd in January?

A Yes, sir.

Q And you omitted to describe any work until the SEC work began in February of 1970?

A Yes, sir.

Q Turn to page 23, please, line 6:

"Q Looking back to the oil and gas properties which were -- strike that.

"Earlier you stated that you had gone to Odessa to meet with Mr. Goodloe, Mr. Boyd, Mr. Selwyn Weber in connection with this Candelaria Goldfield Mining Company which began Select. Have you done work in connection with the SEC matter when you were called to Fort Worth in the first part of February of 1970?

"A Yes.

"Q Between those two times what work did you do in connection with Select Enterprises?

"A None.

"Q What was the purpose of your visit to Odessa to meet with Goodloe, Boyd, and Selwyn Weber?

"A Ed Goodlough asked me to go out there with him because he wanted to trade properties to Select Enterprises.

"Q What properties did he want to trade to them?

"A Well, at that time he was wanting to trade the mica property in the State of New Mexico and he wanted me to go along and listen to the entire deal

and that, if necessary, to draw documents to the effect of this transfer of properties if the deal was made, or do a contract involving the deal. After the meeting was over I advised Mr. Goodloe to stay out of it and have no part of it."

Was that the fact, Mr. Ford?

A Yes, sir.

(Continued on next page.)

Q It is also the fact, is it not, that you admitted in the course of that deposition having knowledge of the Peterson-Goodloe relationship as early as December of 1969 or January 1970?

A Yes, sir.

MR. GOLDMAN: Objection.

Q Turn to page 27, line 21:

"Q I see. We will come at it a different way. In December of 1969 or in January of 1970, did you know the nature of the business transaction between Goodloe on the one hand and the Petersons on the other?

"A No.

"Q Did you know that they were involved in some sort of arrangement in connection with the Southwest Duster properties during that period of time? Did you know this in January?

"A I believe --

"Q Or December?

"A I believe that it was in December that I was aware of some kind of business transaction between Ed Goodloe and the Petersons.

"Q And how did you learn of that? How did you become aware of that?

"A Well, I understood from Ed Goodloe that he had

borrowed money, borrowed the money to buy the leases from Joe Brown. How much money he had borrowed I didn't know."

Is that the fact, Mr. Ford? **

MR. GOLDMAN: Objection to the question.

THE COURT: Overruled.

A Yes.

Q Page 28, line 16:

"Q Did you advise with Mr. Goodloe in connection with the purchase of the leases from Mr. Brown?

"A No."

MR. STOKAMER: Your Honor, I object.

THE COURT: Overruled.

Q (Reading:)

"Q Did you advise with Mr. Goodloe in connection with the purchase of these leases from Mr. Brown?

"A No.

"Q Did Mr. Goodloe indicate to you that the Petersons had any interest in those leases he was acquiring?

"A No. I didn't discuss the matter with him at all. I assumed that they had an interest but I didn't discuss that with him."

Didn't you actually have that knowledge in December of 1969 and January of 1970, Mr. Ford, and it was

not merely an assumption.

A No, sir.

(Court Exhibit 41, Selwyn Weber's request for a severance and mistrial, was marked.)

Q I direct your attention to page 29, line 8:

"Q I hand you what has been marked as Plaintiff's Exhibit 5 to the deposition of James E. Peterson and I ask you if you can identify this document?

"A Yes.

"Q What is the document, sir?

"A It is an assignment of the Southwest Duster leases from Ed Goodloe to Select Enterprises."

Mr. Ford, I place before you Government Exhibit 162. Isn't that the exhibit you were shown on that occasion which you have just identified?

A Yes, sir.

Q It is a fact, is it not, that your secretary notarized the signature of Mr. Goodloe in that exhibit twice?

A Yes, sir.

Q The first time there was a handwritten "23" inserted into the blank prior to the January, and the second time she typed it?

A Yes, sir.

Q Correct?

A Yes, sir.

Q Wasn't that very document in your hands first recorded at Comanche County Courthouse in June of 1970?

A Yes, sir.

Q I show you Government Exhibit 36, and I ask you if that is not an assignment from Ed Goodloe to Select Enterprises which you identified in the grand jury as being the assignment you prepared.

A (Pause) I don't have the grand jury minutes. I think it is. It is the same instrument.

Q It bears the grand jury box and the grand jury date, does it not?

A It sure does.

Q There is only one notarization on that assignment, is there not?

A Yes.

Q Unlike 164 the one that was on the table in the course of your deposition, in the Atoka v. Peterson action.

A Yes, sir. The acknowledgment is left off.

Q My question is this: I would like to direct your attention primarily to your testimony on direct examination that you delivered the assignment from Mr. Goodloe to Select Enterprises to Mr. Goodloe in your

offices on Friday, January 23, 1970. Do you recall giving that testimony?

A Yes, sir. Early in the morning.

Q Do you recall further you said that a few days later you were requested to prepare a title opinion letter which you did on or about January 25 or 26?

A Yes, sir.

Q And you recall your counsel then asked you what day of the week that was and you were uncertain and thought it was a Wednesday?

A I don't remember that.

Q Line 18 of page 1773, Friday's transcript:

"Q Do you recall what day of the week that was, by the way?

"A I'm sorry. I don't remember. It may have been a Wednesday but I'm not sure."

Would it make any difference in your recollection if the 26th turned out to be a Monday following the weekend? Is it your recollection that Mr. Goodloe came into your offices a few days later on a Monday morning and you drafted the opinion letter on that occasion?

A Excuse me. I did draw an opinion letter on the 26th of January 1970.

Q You were asked to on that occasion and did

draft it in response to his request, correct?

A Yes, sir.

Q I hand you Defendant Ford Exhibit F. I direct your attention to the second page of Government Exhibit 36. It is apparent, is it not, Mr. Ford, that the attachments to Government Exhibit 36 consist of your opinion letter with the letterhead having been torn off and they were Xeroxed and attached to Government Exhibit 36?

A It is not there.

Q It is a fact, is it not, Mr. Ford, that the first page of the attachment to Government Exhibit 36 is a Xerox of a torn reproduction of the first page of your opinion letter and all that is missing is your letterhead? Please compare it.

A (Pause) Yes.

Q Would you compare the following page and tell us if the following page appears to be a Xerox of page 2 of your opinion letter.

A (Pause) With the letterhead missing.

Q Also page 3.

A The same.

Q It is a fact, is it not, Mr. Ford, that the assignment, although it bears the handwritten January 23

date, was not in existence until after the opinion letter in your left hand, Exhibit F?

A That is not true.

Q I would like to direct your attention, please, to the deposition in the Peterson action, page 31, line 8:

"Q Did you ever see the conveyances into Mr. Goodloe?

"A Yes, I did."

Those conveyances, were they not, the Rhodes' leases which had originally been signed by the landowners back in '68 and '69 in which Rhodes was assigning to Mr. Goodloe?

"A Yes, sir.

"Q It is a fact, is it not, that when you were asked if you had seen those Rhodes' leases and when you had seen them you volunteered the further fact that you saw them when you were writing an opinion letter from them which you believed was sometime in March?

"A Yes. I said I believe it was in March on that occasion.

"Q When had you seen those, sir?

"A I wrote a title opinion for Select Enterprises sometime in March, I believe, and I had before me the title opinion by another attorney and I also had that document, and I had some other supporting affidavits and

opinions in which I wrote the opinion saying that Select Enterprises had title to a leasehold."

Then Mr. Jordan asked you, did he not, if the assignment of those leases had been reported by that point sometime in March?

A Yes. He asked that question.

Q Line 17:

"Q Did you have the original of the assignment into Goodloe in your possession at the time?

"A Yes, I did.

"Q Had they been recorded at that point?

"A No, they had not.

"Q After you finished with them, to whom did you deliver them?

"A To Joe Boyd or I may have handed them to Selwyn Weber. He was to record the assignment."

Mr. Ford, look at Defendants' Exhibit F, the copy of your opinion letter, and my question is this:

Whenever it was written it does not reveal that the transfers into Mr. Goodloe were not then recorded, does it?

A No.

Q I want to direct your attention just in passing for the moment to page 36 where the notation appears that

a recess was called when Mr. Barnett's deposition and Mr. Brown's deposition were taken, and then your deposition was resumed. Do you have that note?

A Yes.

Q Previously, I showed you a copy of Mr. Rhodes' deposition, 421, at the beginning of the day. I now show you a copy of Government Exhibit 177 for identification. I ask you to turn to page 3 thereof. My question: It is a fact, is it not, that during the course of the Brown deposition on that day you were present in addition to Mr. Jordan and Mr. Peterson.

A It is not. I was not there.

Q As of that point in March of 1972 you had, had you not, previously reviewed with Mr. Barnett his entire files in the course of representing him in a different lawsuit known as Zuckerman v. Economic Planning?

A I did file an answer for him in that suit in Florida and made a motion to dismiss.

THE COURT: That's not the question.

THE WITNESS: I cannot answer the question because I am not sure of the time.

Q I hand you Government Exhibit 431 for identification. My question is this: Did you not attend with him in your offices on the occasion of that date in

January of 1972 when his deposition was taken in respect of the Select matters?

A Yes.

Q You sat by his side throughout the entire deposition?

A Yes, sir.

Q In addition, I hand you Government Exhibit 432 for identification. In January of 1972 you prepared, in connection with Mr. Barnett's first draft, the answers to thirty-eight separately numbered interrogatories seeking events, dates, and places in respect of Select Enterprises, true?

A Yes, sir.

Q I want to direct your attention specifically to answer number 6 on page 1 of those interrogatories. It is a fact, is it not, that you reviewed with him that portion of his answer to that question which refers to title opinions having been reviewed?

A Yes.

Q I would like to direct your attention to 431, the yellow spirally bound exhibit, page 24, beginning at line 7. On the occasion of that January deposition Mr. Barnett was asked in your presence:

"Q What was Mr. Ford's connection with" --

MR. GOLDMAN: Objection. This document is not in evidence.

THE COURT: Then he can put the question whether on that occasion a certain thing occurred.

Q Mr. Ford, was Mr. Barnett asked and did he answer:

"Q Was Mr. Ford's connection with Select Enterprises?

"A Well, as I understand, he had been hired to do some title opinions concerning some of the problems.

"Q For the purposes of the record, you are talking about Bob Ford?

"A Yes.

"Q The attorney who is seated here in the deposition?

"A Yes, ma'am."

Was that the fact?

A Yes, sir.

Q It is the fact, is it not, Mr. Ford, that Mr. Barnett stated that he had talked to you in preparing his March balance sheet because he understood that you had been hired to do some title opinions for Select?

A No, sir.

Q Page 24, line 22:

"Q That statement of March 4?

"A Yes, ma'am. They told me they would. They told me they would like an opinion statement at a later time and this is why I remember, I guess the reading or the discussion of Mr. Ford of that title opinion because I felt like, that I could go ahead and do some of this background work ahead of time and actually did some work in between."

Is that the fact, Mr. Ford?

A No.

Q Well, it is the fact, is it not, that on numerou occasions between March of 1970 and March of 1972 you had seen, reviewed or otherwise read the Board of Directors' meeting minutes for Select Enterprises, March 26 meeting, purporting to be at your office?

A No.

Q Well, it is the fact, is it not, that on at least one or more occasions prior to your March deposition

in the Peterson action, when you were testifying you had read that portion of the Board of Directors' minutes which explicitly refer to your opinion letter dated January 26, 1970?

MR. GOLDMAN: Objection.

THE COURT: Overruled. He is asking whether that is the fact.

A Yes. I reviewed it on one or maybe two occasions.

Q After the break on March 14 and the resumption of your deposition, you had your attention squarely directed to that paragraph of the board minutes, did you not?

A I probably did. I am not -- what page?

Q Page 37, line 23.

A Yes, sir.

Q "Q You were the company attorney at the time of March 26, 1970, were you not? Now, the reason I am stating this is it says here 'The Board of Directors then received a report from the company's attorney, Robert E. Ford.'"

And you answered:

"A Well, I was not the company attorney. I was hired specifically to investigate and determine

the title to those oil and gas leases and I did render a title opinion, but that doesn't make me the company attorney."

Is it the fact, Mr. Ford, that the question put to you actually quoted the precise date from those minutes?

A Yes.

Q Beginning at line 12?

A Yes.

Q "We obtained a reference from Mr. Barnett which indicated that possibly this title opinion that you wrote in connection with the Comanche County oil properties was dated January 26, '70, and lease" or, as you corrected, 'was so reflected in these minutes on the second page", and then Mr. Jordan asked you:

"Would that be quite possibly the correct date of that title opinion."

Would you tell the jury what your answer was, sir, on that occasion?

A "No, it isn't. That opinion was done just prior to that board meeting and I wish I had a copy of it. Mr. Goodloe and the boy" -- and that is incorrect; it should be "Mr. Sullivan and Mr. Boyd, they took my entire file with them. Maybe when Roma Dell gets back we can

dig around. I don't know. They may have wanted it" -- and the term "dated" here is not correct --

THE COURT: Are you reading what you are saying there or are you interpolating? The question, first, is what was the answer and you make your corrections later on.

THE WITNESS: All right, sir.

THE COURT: But what you are doing is confusing the whole record.

THE WITNESS: Well, I'm sorry.

THE COURT: What was the answer that you gave to the question?

THE WITNESS: He asked me how did I answer that question and I was giving him the answer.

THE COURT: What does the record show?

A The record shows, your Honor, as follows:

"No, it isn't. That opinion was done just prior to the board meeting -- that board meeting, and I wish I had a copy of it. Mr. Goodloe and the boy they took my entire file with them. Maybe when Roma Dell gets back we can dig around. I don't know. They may have wanted it dated in January but I know it was not done except for, specifically except for this board meeting."

Q Mr. Ford, wasn't that really the correct date of that after all?

A No, sir.

MR. MacDONALD: We have no further questions on cross-examination.

THE COURT: Any further cross-examination?

I think what we will do, Mr. Segal, before you start is to have a short recess.

(Recess.)

CROSS-EXAMINATION

BY MR. SEGAL:

Q MR. Ford, do you recall in April of 1970 appearing before the SEC and having a conversation with Mr. Hewitt and Mr. Boyd?

A Yes, sir.

Q Were there any conversations at that time with regard to the request of Select for title policies before submitting stock to the owners of the California property?

A Yes, sir.

Q Would you tell us what that was, please?

A Yes, sir. The conversation dealt with the situation with respect to the ownership of the California lands by Select and the conversationd was that Select had requested and required as a condition precedent to the

delivery of the stock to Brinlee and Vinson and Desert Investment Company of the title policies to the land in California and Mr. Hewitt knew about it and Mr. Boyd and I, and also there was -- Mr. Hewitt was handed a copy of the letter agreement of March 2 by and between Brinlee and Vinson and Select regarding the the the title policies to that land.

Q Do you recall any comment Mr. Hewitt may have made at that time?

A Yes.

Q Would you tell us what that was, please?

MR. MacDONALD: Objection.

THE COURT: Sustained.

Is it recorded somewhere?

Q Do you know whether or not this conversation that you had was a conversation in which a stenographer was present or in which stenographic notes were taken?

A Yes, sir.

Q Do you recall whether or not you were on the record at this time?

A Yes, sir.

Q Mr. Ford, do you recall what the date was when this conversation was recorded?

A Yes. They were reviewing the SEC hearing --

THE COURT: He asked you for the date.

A March 9, 1970.

THE COURT: I thought that this started out with an inquiry of you about a talk in April of 1970.

THE WITNESS: Yes, sir, it did.

THE COURT: Now you are saying March 9.

THE WITNESS: Yes, sir. He was asking me about Mr. Hewitt's comments and his comments were regarding the March 9 hearing at which Joe Boyd appeared before the SEC.

Q I show you Government Exhibit 27 which is the transcript of March 9 and ask you if you could please just look through that and see if you can locate where it is in that transcript that this conversation was held?

THE COURT: This is not the conversation of this witness with Mr. Hewitt; this is some other conversation, is that right?

MR. SEGAL: I believe so, your Honor.

THE COURT: All right. You asked for the the conversation that occurred in April of 1970.

MR. SEGAL: That's correct.

THE COURT: In respect of title policies.

MR. SEGAL: Your Honor, if I may just examine further on that.

Q Mr. Ford, were you present at a conversation

in which Mr. Boyd and Mr. Hewitt and yourself talked about the topic of title policies?

A Yes, sir.

Q When did that occur?

A April 17, 1970.

Q Was that conversation recorded?

A I don't know. I really don't know. It was -- it may have been off the record but, no, wait a minute. It was of record, yes, sir.

Q It was on the record?

A Yes, sir.

Q And the date of that was April 17?

A Yes, sir.

Q I show you Government's Exhibit 29 and ask you to examine that document rather than the one you are examining, to determine where in this exhibit?

A It is in both of these exhibits.

Q Would you just point out in 29 first, which is the April document?

I call your attention to page 159 and see if that may be the appropriate place.

A Yes, sir.

Q Do you recall these answers being given to these questions:

"Q Mr. Boyd, you say you have your 750,000 shares in your possession, is that correct?

"A This is correct.

"Q Okay.

"A We have no intention of delivering same until we have satisfied ourselves as to title. This is our agreement with these people that we purchased from."

Do you remember that answer being given to that question?

A Yes, sir.

Q Do you recall, Mr. Ford, any conversation with Mr. Hewitt with Regard to the resumption of the trading of Select stock after it had been suspended?

A I seem to recall a statement he made to Mr. Boyd about that.

Q Do you remember what that was?

MR. MacDONALD: What date or what the statement was?

MR. SEGAL: Very well.

Q Do you remember when it occurred, where it occurred and what the statement was?

A It occurred in the discussion off the record on April 17, 1970.

Q This was at the SEC?

A Yes, sir.

Q Do you remember what was said?

MR. MacDONALD: We object.

THE COURT: This is not on any record? Is that what you are saying?

THE WITNESS: Yes, sir.

THE COURT: I will allow him to answer it.

Q If you would, Mr. Ford, please.

A He said he no longer had any holds of the trading of Select stock.

Q Did he say anything else?

A That he could resume trading.

MR. SEGAL: I have No further questions, your Honor.

THE COURT: Is there any oth er defendant who wishes to cross-examine?

MR. STOKAMER: Yes, sir.

CROSS-EXAMINATION

BY MR. STOKAMER:

Q Mr. Ford, do you have in front of you the testimony of April 22, 1970, by Mr. Goodloe?

A Yes, sir.

Q What is the number of the exhibit?

A Government Exhibit 327.

Q Would you open it up to page 41, please?

Now, you were present at that deposition, were you not?

A Yes, sir.

Q In fact, although Mr. Goodloe was the person being deposed, you took part and provided some answers to Officer Hewitt, isn't that correct?

A Yes, on this page I did.

Q One of the subjects that were discussed at that deposition and specifically on that page were the Brinlee and Vinson transfers or sales to Select, isn't that correct?

A Yes, sir.

Q You were asked before, were you not, concerning a question and answer on page 41, the question put by Mr. bewitt:

"That this is your deal and was your deal from the beginning to the end",

and then your answer was;

"Goodloe was right", and then you continued and that question and answer were read before when Mr. MacDonald questioned you.

Is that correct?

A Yes, sir.

Q When you said, "Goodloe is right," did that refer to a question and answer on that same page, starting on line 11 and going on to line 12?

In other words, was the question on line 11, "Who was handling this deal," a question by Officer Hewitt to Mr. Goodloe?

A I see that.

Q Is that correct?

A Yes, sir.

Q And Mr. Goodloe's answer was: "Well, Joe Boyd is the one that handled this." Is that correct?

A Yes, sir.

Q And when you said "Goodloe is right," was that the question and the answer that you were referring to?

A I think it was.

MR. STOKAMER: Thank you. I have no further questions.

THE COURT: Anybody else?

CROSS EXAMINATION

BY MR. L ESSER:

Q Mr. Ford, I represent Dr. Knisely. You have known him for quite some time, have you not?

A Yes, sir.

Q Now, with respect to the March 26, 1970 board of directors meeting, you were present?

A Yes, sir; for a short time.

Q And Dr. Knisely was there, too?

A Yes, sir.

Q Did he conduct the meeting?

A I don't think so.

Q Did he participate in that meeting in any way as far as you remember?

A other than -- except his physical presence.

Q That's all he did?

A Yes, sir.

Q And he signed the board of directors meeting as "present," did he not, the minutes, as present, did he not?

A I didn't see him sign that.

Q But it's signed. You saw the completed copy, did you not?

A I am having some trouble remembering. I think it was April 17th or maybe the 22d that I saw that.

MR. LESSER: Thank you.

THE COURT: Anybody else?

MR. RICHMAN: I have one or two questions, your Honor.

CROSS-EXAMINATION

BY MR. RICHMAN:

Q Mr. Ford, I represent Emerson Titlow of Reno, Nevada.

I think on direct examination you mentioned the State of Nevada. Did Mr. Goodloe have a ranch in the State of Nevada?

A No, sir.

Q Were you in the State of Nevada in January of 1970?

A No, sir.

Q Do you know Mr. Emerson Titlow?

A No, sir.

MR. RICHMAN: Thank you, sir.

No further questions.

THE COURT: Anybody else?

CROSS-EXAMINATION

BY MR. RHODES:

Q Mr. Boyd, I believe you testified that you have known Mr. Barnett a number of years, is that correct?

A Yes, sir.

Q I believe you testified that you were the one that introduced him to Mr. Goodloe?

A Yes, sir. I am sure I did. He was doing

my income tax return in my office and that's where they met.

Q Did you advise Mr. Barnett of what Mr. Goodloe wanted him to do?

A No, sir.

Q I believe also I heard you testify earlier that you did not advise Mr. Barnett of the existence of the Brinlee quitclaim deeds.

Is it a fact that you did not?

A Well, it was a warranty deed, Mr. Rhodes, and I didn't discuss it with him at all that I recall.

Q You didn't discuss the quitclaim deed of Brinlee, Ace Associates into Brinlee?

A No, sir.

Q I believe during this period of time, late March, say late February and early March, you were aware that Mr. Barnett was preparing an audit, were you not -- an audit of Select Enterprises?

A I know that he had prepared one March 5, 1970.

Q I believe that was a pro forma, was it not?

A Yes, sir. That was a pro forma.

Q And thereafter, from time to time, did Mr. Barnett request of you certain information or order to confirm representations made to him in order to prepare

the audit?

A I don't recall him requesting any information from me. He already had my title opinions.

Q Did he not request title opinions for confirmation of what the books and records showed?

A Yes, as of March 5.

THE COURT: Do the books and records show a title opinion?

THE WITNESS: Yes, sir.

THE COURT: What book showed a title opinion?

THE WITNESS: What I was saying is the title opinions were delivered to him for his March 5 pro forma statement.

THE COURT: What book showed the title opinion?

THE WITNESS: I don't know if a book shows that, your Honor.

Q The January 26 title opinions are what we are talking about and they are already in evidence. You have seen them?

A Yes.

Q You delivered the title opinion to Mr. Barnett on the Comanche County property, is that correct?

A Yes, sir.

Q And you knew that he was checking the books and

records for preparation of his audit at some period of time and that he was examining your title opinions for purposes of checking what the books and records showed, is that correct?

A Yes, sir.

Q You knew that?

A Yes, sir.

Q And you also delivered a title opinion on the mica mines to Mr. Barnett and at the time that you delivered it, you knew that Mr. Barnett was examining the title for purposes of an audit?

A True.

Q Is that correct, and then, further, Mr. Ford, you delivered to Mr. Barnett a title opinion, or at least delivered to him verbal discussions relative to the title on the California property, did you not?

A No, sir.

Q I am going back briefly to your discussion on direct before the weekend, when I believe you stated that you discussed with the SEC the old Spanish land grant and that the title to the California property was derived from an old Spanish land grant. Is that correct?

A Those are the notes that I had in my conversation with Robert H. Harvey.

jbs

Q But at the same time, did you advise Mr. Barnett that the title to the California property was derived though an old Spanish land grant?

A No, sir.

Q At no time?

A No time, and his testimony shows thawt.

Q MR. Boyd, I didn't ask you that and please just answer the questions that I ask you.

Further, I believe you were aware at the time, Mr. Ford, that Mr. Barnett had for a period of years served the City of Abilene on the City Council, is that correct?

A Yes, sir.

Q Were you aware that Mr. Barnett's reputation had been one of sort of a crusader for truth and honesty in government?

A Yes, sir.

THE COURT: What does that mean, "sort of"?

Q Well, or at least a general reputation in the community; isn't that correct?

A Yes, sir.

Q And further, Mr. Ford, you knew that if you showed Wayne Barnett the quitclaim deeds to the California property, that he would not have done an audit, didn't you?

A Oh, no. I didn't show it to him and I didn't know that.

Q You knew he was doing an audit, didn't you?

A Yes, sir.

Q And you knew that a quitclaim deed is just like raising a flag to questions of title, didn't you?

A No.

Q Mr. Ford, where did you attend law school?

A University of Texas.

Q Did you take Property?

A Yes.

Q Have you read title opinions and done title opinions for a number of years?

A Yes, sir.

Q Are you familiar with the fact that auditors are knowledgeable about the law relative to title?

A I don't --

THE COURT: Is he familiar with what they know?

MR. RHODES: Yes, sir.

THE COURT: Do you know what auditors know?

THE WITNESS: No, sir.

Q Are you familiar with the fact that auditors themselves rely upon what the lawyers say relative to title?

A Yes, I think that is a true statement.

Q Then I want you to further tell me at this point whether or not at any time, Mr. Ford, you advised Mr. Barnett that the Securities and Exchange Commission was having a problem or was inquiring of the activities of Select?

A No, sif, I didn't.

Q You were in Fort Worth in March, at the very time that Mr. Barnett was working on his audit, were you not?

A No.

Q I believe you testified earlier on March 9 you attended and had an interview with Mr. Hewitt?

A I did not testify to that.

Q On March 9, 1970, you did not have an interview with Mr. Hewitt?

A I did not.

Q Were you aware at any time during March and prior to March 26, 1970, March 28, 1970, that the Securities and Exchange Commission was questioning the activities of Select?

Were you aware of that, sir?

A No.

THE COURT: That means that you didn't know at

any time in March that the SEC was looking into Select; in March or earlier? Is that what you are saying?

THE WITNESS: That's true. I didn't know. May I explain something, your Honor?

THE COURT: Go ahead, Mr. Rhodes. Don't explain to me. Just answer his questions.

THE WITNESS: Mr. Rhodes, may I amplify the answer to that?

MR. RHODES: I have no o bjection and I am sure your lawyer can clarify it if you want him to.

Q I believe you testified to the matters relative to representing Mr. Barnett at various hearings during the investigation of Select Enterprises by the SEC, is that correct?

A Yes. April 30, I believe.

Q And you have read or heard or seen testimony by Mr. Barnett during the periods of time of your preparation for this trial here?

A Yes, sir.

Q I want you to look at this jury and tell them if during all of the testimony that you have seen, heard or know about that Wayne Barnett has given that he has told the truth every time he has testified?

A Yes, sir.

THE COURT: Just a minute, just a minute. That is not a proper question.

MR. RHODES: All right.

I will withdraw it.

THE WITNESS: I have one exception to that.

Q All right. You can make it, as far as I am concerned.

A He stated, I believe, that I had, and mistakenly, that I had given him an appraisal on some property in Midland and I didn't do that.

Q Further, regarding the appraisal in California, are you familiar with the fact that a Mr. Marquardt was called from your office and a telegram was received at your office for a confirmation?

A I am familiar with it now. I was not at the time.

Q Has anybody advised --

THE COURT: What do you mean you are familiar with it now? Were you present at any time a telephone call was made to a Mr. Marquardt?

THE WITNESS: No, sir.

THE COURT: Strike out the witness' answer.

Q Has any one of these defendants advised you that

they called Mr. Marquardt from your office?

A Yes, sir.

Q Who?

A Mr. Barnett and Mr. Boyd.

Q Who advised you that they made the call?

MR. MacDONALD: We object.

THE COURT: Sustained.

Q Did you receive a telegram from Mr. Marquardt at your office?

A No, sir.

Q Have you paid a bill for a collect telegram from Mr. Marquardt at your office?

A I think I did. I think it was on my telephone bill. As I recall, it was something over $8.

Q Are you aware that the telegram is the same telegram that has been introduced here in evidence as being from Mr. Marquardt?

A I don't believe I am aware of that, Mr. Rhodes.

Q You have seen the telegram, have you not?

A Yes, sir. I have seen a copy of it and I saw the telegram at the SEC hearing.

Q Is that the same telegram that was received at your office?

A I don't know that it was received at my office.

Q It carries your address, though, does it not, and your telephone number?

A It does have my correct telephone number, yes, sir.

Q And it is you address?

A The address is not correct.

Q We are referring to Exhibit 30, Mr. Ford. What is the address on that telegram (handing)?

A 1404 North Fourth Street.

Q And that is not your address?

A No.

Q What telephone number is on the telegram?

A 673-8193.

THE COURT: What did you say the 1404 number is? It is not yours?

THE WITNESS: 1404 North Fourth Street.

THE COURT: That is not your office?

THE WITNESS: No, sir.

Q What is your office address?

A 1446 North Fourth.

Q About how far off are the numbers there?

A Well, it is not very far. 1404 to 1446, that's all I can say.

Q With respect to the Maxson deed, I believe you

heard testimony from Mr. Maxson that he gave a deed on the Patio Building to Select Enterprises and that he had a deal with you to hold a deed.

Do you recall Mr. Maxson's testimony in that regard?

MR. GOLDMAN: Objection, your Honor.

THE COURT: I think since the objection is made you will have to follow the rule to read the testimony that he gave, rather than to characterize it yourself.

MR. RHODES: Well, I don't have the testimony he gave.

THE COURT: I'm sorry. The question is not permissible in this form.

Q Did you have any agreement with Mr. Maxson to hold a deed and not record it?

A No, sir.

Q Did Mr. Barnett from time to time request any confirming information from you in order to confirm the audit that he was preparing?

A No, sir.

Q Mr. Barnett requested noth ing from you?

A The only thing that was handed to Mr. Barnett was the copy of the title opinions and he got those from my secretary as of March 5, 1970.

Q How do you know he got those from your secretary?

A Because he had them in his possession and I think he told me he got them from her.

Q With respect to the Brinlee and Vinson warranty deeds to Select, did you advise Mr. Barnett at any time that anyone else other than you would be recording them?

A No.

Q Did you advise him that you were going to see to the recording of the Brinlee warranty deed and the Vinson warranty deed to Select?

A No, sir.

Q Have you ever had any conversations with him relative to the recording of the warranty deeds?

A I have no recollection of any kind of conversation about that with Mr. Barnett.

Q Did you at any time advise Mr. Barnett of any claimed interest by Mr. Peterson in the Comanche County property?

A No, sir.

Q Did you advise Mr. Barnett at any time relative to any mortgages which might exist upon the Comanche County property?

A I don't think so. There were no mortgages on the property that I knew of except that deed of trust to Godfrey Sullivan for $100,000. That was dated June 16, 1970, and I don't believe that I talked to Wayne about that.

Q That was long after the period of time that Mr. Barnett prepared the audit?

A Yes, sir.

MR. RHODES: That's all the questions I have.

THE COURT: Any other counsel?

Any redirect?

REDIRECT EXAMINATION

BY MR. GOLDMAN:

Q Mr. Ford, you were asked last Friday about a meeting at the SEC on April 6, 1970, involving Mr. Boyd and Mr. Hewitt.

Did you represent Mr. Boyd at that?

A Yes, sir.

Q That was not recorded, was it?

A No, sir.

Q Were any documents given to the SEC at that time?

A Yes, sir.

Q Who gave them, sir?

A Joe Boyd.

Q By the way, on this April 9 hearing at the SEC, do you know now who represented Mr. Boyd?

A I am sorry, sir. I didn't think there was a -- April 6 was that informal SEC meeting. I don't remember one April 9.

Q No. I am talking about March 9. I am mixed up on the dates.

Mr. Barnett asked you about the March 9 appearance of Mr. Boyd?

A Yes. With respect to title policies on the land. He was represented by Sam -- by Mr. Weber.

Q You didn't represent him at that time?

A No.

Q When were you first asked to represent Mr. Boyd or Select in connection with the SEC investigation?

A I think it must have been April 5, 1970.

Q The day before the informal meeting?

A Yes, sir.

Q Before you is Government Exhibit 34, the title opinion dealing with the New Mexico mica mines.

Do you have that document in front of you?

A Yes, sir.

Q Is that the opinion letter dealng with the

mica mines?

A Yes, sir.

Q Does that letter have anything to do with any equipment?

A Absolutely not.

Q What is the opinion letter directed to exactly?

A It is directed to the ownership of the Cribbenville mines, which are specifically named there.

Q Before you is Government Exhibit No. 14. Would you look at that, please. I believe that exhibit was shown to you Friday by Mr. MacDonald.

Do you recall looking at that exhibit?

A Yes, sir.

Q Could you tell us what that exhibit is?

A This is a statement by scmebody about a meeting in Fort Worth on that date and I --

Q Government Exhibit 14, sir?

A Excuse me. I am sorry.

What is the question?

Q Do you recall being shown that document by Mr. MacDonald on Friday?

A Oh, yes, sir.

Q And that is the transfer records of select stock, is it not, sir?

A That is what it appears to be, yes, sir.

Q You were asked if there is anything on that transfer record that shows that the stock you received was restricted.

A That's correct.

Q Do you recall what your answer was?

A That iw was restricted; there is nothing on here that shows it was restricted, but it was.

Q Is there anything on there that shows that anyone's stock was restricted?

A No, sir.

Q Is there anything that shows that the stock was not restricted?

A No, sir.

Q You have before you Government Exhibit No. 3. Would you describe that exhibit, please? It is the Grube letter.

A The exhibit is a letter written to Mr. B.H. Grube at the Ranch Inn, in Nevada, and shows to have been signed by me and dated April 2, 1970.

Q Is that your signature?

A No, sir.

Q Do you recall where you were on April 2, 1970?

A Yes. I was in the hospital, with my mother.

Q Was there any occasion for that, sir?

A Well, I was told that she was dying.

Q Was she hospitalized at that time?

A Yes, sir.

THE COURT: Whose handwriting is that, the signature?

THE WITNESS: Judge, I don't know whose handwriting it is. I previously told you that I didn't know; it could have been my secretary's handwriting.

Q By the way, you said in response to Mr. MzcDonald's questions today that on April 22, I believe, when Mr. Goodloe testified at the SEC, a copy of the minutes of the March 26 meeting were given to the SEC; is that correct?

A Yes, sir.

Q Did you on that date have the occasion to read those minutes?

A No, sir.

Q Do you recall whether you saw them at any time prior to that?

A No, sir.

Q Mr. MacDonald today read a question and answer from your deposition in March of 1972 in which he mentioned Candelaria.

Can you tell the jury where you got or when and where you received information concerning Candelaria?

A Yes, sir.

Q When was that, sir, and what was it?

A August 31 of that year, the SEC filed injunctive proceedings in New York against Select Enterprises and I was sent information from them and that is where I got it. I still have it.

Q With respect to th California land, sir, did you ever give a title opinion on that land?

A No, sir.

Q Did you ever give an oral title opinion on that land?

A No, sir.

Q On March 28, 1970, you testified, Friday, I believe, that you left the building at about 5 o'clock to go to a play rehearsal.

A Yes, sir.

Q When did you return to that building?

A The next day about 10.

Q In the morning or afternoon?

A In the morning.

Q Who was there, sir?

A I believe Mr. Boyd was there and I am not sure

whether at that moment Mr. Barnett was there or not. I think he might have been. I am not sure. Then, ther was -- I am not sure but I seem to remember Chapel having been there at that time.

Q You have heard Mr. Rhodes ask a question concerning Mr. Maxson's testimony as to your holding a deed for him.

Do you recall any such testimony?

A No, sir. Well, I remember his asking me the question, yes.

Q Did Mr. Maxson testify to that?

A I don't think so.

Q Did you ever have any dealings with Mr. Maxson concerning holding a deed?

A No. In my grand jury testimony I believe I told the grand jury that I thought that Mr. Maxson had been in my office and maybe had signed a warranty deed there but that was a mistake because it didn't happen that way.

The deed was signed in Midland County, Texas.

Q You have before you Government Exhibit 327 which has been identified as the transcript of Mr. Goodloe's testimony before the SEC April 22, 1970.

Turn to page 41 there, sir.

A All right.

Q Do you recall, starting with or looking at line 17, please, do you recall Mr. MacDonald asking you a question and then part of an answer, sir?

A Yes, sir.

Q Could you now read that question and the entire answer?

A On line 17, the question:

"This is your deal and was your deal from the beginning to the end. Mr. Ford, Goodloe is ritht, the contract was made and entered into and they came to my office and then the board met and as far as we are concerned, the total amount of stock issued for the total land. Now, the breakdown on the stock which is not -- which had been issued but not delivered, this, the policy, the procedure to follow was to work out the -- they have to convince us, you might say, that it is to convey subsequent acquisition of a defendable title and immediate right of possession."

MR. GOLDMAN: I have no further questions. Thank you, sir.

THE COURT: Any further examination?

MR. MacDONALD: Yes, your Honor.

RECROSS-EXAMINATION

BY MR. MAC DONALD:

Q A moment ago Mr. Goldman handed you Government Exhibit 14 in evidence, that being a list of shareholders, dated April 14, 1970.

A Yes, sir.

Q Do you recall you were asked if that list showed any other specific shareholders on there as having restricted stock, and you said no.

A That's right.

Q I would like to refresh your recollection that you were shown the list you have in your hand in a later stage of Friday's proceedings when you were being asked if you could remember what exhibit it was that Boyd was delivering to the SEC, and it was then that you were shown that shareholders' list for the first time, and sometime earlier you had been shown a different transfer record concerning the Robert E. Ford, Abilene, Texas, shares?

MR. GOLDMAN: Objection to the statement. I don't think it is a question.

THE COURT: I cannot hear a word you are saying.

MR. GOLDMAN: I don't think it was a question. I object to the statement, your Honor.

MR. MAC DONALD: I am trying to refresh the witness' recollection.

THE COURT: Is that what happened? That's the question.

Q Was it?

A I had in my possession about three certificates of stock which were in the name of Ed Goodloe, trustee, and they were legend and restricted, and you inquired about that, I believe, and then I sent those off to have a certificate recorded in my name instead of Ed Goodloe, Trustee.

Q Is the document in your hand first shown to you on Friday in the context of asking you if you can remember Boyd delivering it to the SEC on April --

A Yes, sir.

Q Some minutes ago you had been shown transfer records bearing the name Robert E. Ford and two transferors for a total of 6700 shares, Government Exhibit 12, correct?

A Yes, sir.

Q I want to show you Government Exhibit 10, some earlier shareholders' transfer records which you were not shown on Friday. Do you see those?

A Yes, sir.

Q On examination of the transfer records, Government Exhibit 10, it is apparent, is it not, that they include transfer sheets through March 6, 1970, as the letter indicates, the first paragraph?

A I'm sure that is correct. Yes, sir.

Q The second letter picks up the transfer sheets beginning on March 9, 1970 and running through April 1, 1970, correct? You have to look at the dates on the top of the transfer sheets, Mr. Ford.

A What is your question?

Q First of all, do you acknowledge that the document you have in your hand is the one that was shown to you on Friday, and the question was put to you, did it refresh your recollection concerning your receipt of unrestricted Robert E. Ford stock?

A No.

Q Do you recall being further asked if you could see on the left-hand side of that transfer sheet the name of the two transferors whose certificates were surrendered to make up the 6700 share block that was given to Robert E. Ford of Abilene on there?

A Is it on the left-hand side here?

THE COURT: Look and see.

THE WITNESS: I am looking and I don't see it.

Q Is your recollection refreshed that your attention was called to the top two transferors, Mr. Patrick and Mr. Campbell?

A No.

Q Is your recollection refreshed that you were asked squarely about the Robert E. Ford of Abilene, the Ford listed on the upper right-hand corner of that exhibit?

A Yes. Those shares were restricted.

THE COURT: They were restricted. Looking at that transfer sheet you knew that that transfer sheet referred to the transfer of restricted stock; isn't that so?

THE WITNESS: That's not indicated from this sheet, your Honor.

THE COURT: You knew the source of the shares that were transfered to Robert E. Ford?

THE WITNESS: Yes.

THE COURT: You knew they were restricted shares?

THE WITNESS: Yes.

THE COURT: Therefore you knew that restricted shares were transfered to Robert E. Ford; isn't that so?

THE WITNESS: Yes, sir.

THE COURT: That's what he is asking you.

Q I hand you Government Exhibit 323-A in evidence. I direct your attention to the page which appears on the top thereof.

A Yes, sir.

Q It is a fact, is it not, that the mortgage of record in Rio Arriba County was directed and listed to mica claims themselves, on the ground and not on the equipment?

A Yes, sir.

Q In your opinion letter it made no reference for disclosure in request to such a mortgage, correct?

A Correct.

Q Directing your attention to Mr. Marvin Segal's question to you about an off-the-record conversation not recorded in any transcript occurring on April 17, 1970, do you recall being asked about such a conversation between Mr. Hewitt and Mr. Boyd which you witnessed?

A Yes, sir.

Q You testified, did you not, that you remembered that Mr. Hewitt on that occasion said he no longer had any calls or holds.

A Holds.

Q And that Mr. Boyd could resume trading Select

stock?

A Yes.

Q I would like to direct your attention to last Friday and ask you if on that occasion, page 1878, line 10, you were asked the following questions and gave the following answers:

"Q Do you remember discussing in the course of that meeting with Mr. Hewitt and Mr. Boyd" -- that's referring to the April 6 meeting, eleven days earlier -- "the fact that trading had been suspended by the SEC in Select stock for a ten-day period, April 2 to April 11?

"A I don't recall that.

"THE COURT: Didn't you know about the suspension?

"THE WITNESS: Yes.

"THE COURT: When did you know about the suspension, when it occurred?

"THE WITNESS: I didn't know that it had occurred until 1972, but I can give you my best recollection of that."

Did you make those answers on Friday afternoon?

A Yes, sir.

MR. MAC DONALD: We have nothing further, your Honor.

MR. GOLDMAN: I have one question, your Honor.

THE COURT: Go ahead.

FURTHER REDIRECT EXAMINATION

BY MR. GOLDMAN:

Q In 1970, as far as you knew, who was the source of the stock you received?

A Ed Goodloe, trustee.

MR. GOLDMAN: No further questions.

THE COURT: If that completes it, we will take our recess now. We have now completed with this witness and the witness is excused.

(Witness excused)

(Luncheon recess)

procedures in accounting, such as depreciation had not actually been recorded for the period of time under consideration and this was the adjusted entry that was made.

Q During this period of time, did you have an occasion to examine a title opinion on the Southwest Industrial property or the Comanche County property?

A Yes. I read a title opinion concerning that property.

Q By whom was that prepared?

A By Robert E. Ford.

Q From whom did you obtain it?

A I believe I obtained it from Robert E. Ford.

Q I believe that you stated you examined an appraisal, also. By whom was that prepared?

A On the Southwest Industrial properties? This was prepared by Joe Brown.

Q Did you know Mr. Brown?

A Yes, I have known Mr. Brown.

Q How long had you known Mr. Brown?

A Then, approximately ten or fifteen years.

Q I am going to hand you what is marked as Government Exhibit 163 and 164 and can you identify these items?

Comanche County property?

A No, sir.

Q Did the records reflect and were you advised by anybody that there was a claimed mortgage on the property? **

A No, sir.

Q If you had been advised and if the reports reflected that it was mortgaged, what would you have been required to do?

A I would have had to set this liability out in the liability section of the balance sheet.

Q With respect to another item on the balance sheet, was there a time that you were furnished with an appraisal on the mica property?

A Yes, sir, I was.

Q Why were you furnished with an appraisal on the mica property?

A Because the mica property was going into Select and, here again, I requested it from the standpoint of -- we had no basis as far as stock is concerned, stock proce, so far as I could find, so we had to use the evaluation for a determination of the verification of the books and records.

Q Were you furnished with a title opinion on the

mica property?

A Yes, I was.

Q By whom?

A It was by Robert E. Ford.

(Defendant Barnett Exhibit B marked for identification.)

Q Mr. Barnett, I hand you what is marked as Barnett Exhibit B and would you explain to the jury briefly what that is.

A This is part of the information that I used as verification of the books of Select Enterprises, Inc. That is title opinion, the report on the mining property by George D. Harris --

Q Well, did you know George Harris?

A Yes. I have known George Harris for a number of years.

Q What does he do?

A He is a geologist. He has a master's degree in geology and geological engineering.

Q Do you know that he makes reports on numerous types of properties?

A Yes.

Q Do you know whether or not banks rely upon his reports as to their accuracy?

being the same one that had been theretofore delivered to you by Mr. Goodloe?

A No, not particularly, because, if you notice, there was a general report that I was referring to back then on January 20 that Mr. Harris had done.

Although he did not set that out in this, he had done a geological report concerning these mines.

Q Were you advised by anyone that the mica mine was in operation at the time that you did the report in March of 1970, during the period of time that you prepared the audit? 4/

A Yes, I was told that they had started operations on it?

Q Who told you that?

A E. D. Goodloe.

Q Did you examine the title opinion prepared by Mr. Bob Ford on the property in New Mexico, the mica mine?

A Did I compare it?

Q Examine it.

A Yes, I examined it.

Q Did you examine any other affidavits and, if you would examine the file and reflect if those did come from or did this information come from your file based upon matters that you examined?

A Well, I had this at one time.

Q Where did you obtain it?

A From Mr. Goodloe and Mr. Boyd and the opinion letters from, I believe, Mr. Ford.

Q Was this a part of your work papers?

A It would be what would be considered part of the work papers in one respect and, yes, this is information that is the client's information and I returned it to them.

THE COURT: I think we will take a recess at this time.

(The jury left the courtroom)

THE COURT: Mr. Sussman, I have gone over the question that has been raised and reraised by Mr. Ehrlich on Exhibit 92 and I would like to bring your attention to that.

My present inclination is to strike the entire exhibit from evidence for two reasons:

One, I am not clear as to just what its competence is and, secondly, it seems to me to be cumulative evidence at best and, if so, the path of least resistance is to get rid of it.

MR. SUSSMAN: That is Court's Exhibit 36.

THE COURT: Yes.

MR. SUSSMAN: I have a copy.

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California.

Q That's sufficient. Are there many more?

A Yes, there are a number of them. There are two more pages of those, or three more pages.

Q Did you rely upon the credentials of Mr. Marquardt in the appraisal?

A Yes.

Q Did you require that a confirmation, and updating, and additional property descriptions be given to you regarding the California property from Mr. Marquardt?

A Yes, I did.

Q State whether or not the occasion arose in the offices of Mr. Ford whereby a telephone call, if any, was placed.

A Yes. There was a telephone call.

Q Who placed it?

A Dr. Joe Boyd.

Q Where were you?

A I was right beside him.

Q Did you hear Dr. Joe Boyd call anybody by name?

A Yes.

Q Who?

A Mr. Marquardt.

Q How long did Mr. Joe Boyd talk to the man on the

other end of the line?

A A minute or two. He was discussing the difference between this appraisal and the warranty deed. There was a discrepancy as far as the appraisal on the particular tracts of land.

Q Who pointed out that discrepancy?

A I did.

Q Thereafter, did you have occasion to talk over the telephone on the same telephone conversation?

A Yes.

Q Whom did you talk to, or did you call anybody by name?

A Yes. Mr. Boyd told me that this was Mr. Marquardt and I called him "Mr. Marquardt," and Mr. Boyd had started discussing this discrepancy, and then he said, "Wayne, explain where the discrepancy is and what it is."

And he told Mr. Marquardt who I was, and I called him "Mr. Marquardt," and I told him what the discrepancy was.

Q What did Mr. Marquardt agree to do, if anything?

A I asked him for an updating and confirmation, I asked him if he would send me a telegram covering specifically the tracts of land that were in the warranty that I had read and compared with the appraisal, and he

said it didn't make any difference, that this acreage was the same and that one tract, as far as the per acre value would be the same as the other, $260 per acre.

THE COURT: Who said that?

THE WITNESS: Mr. Marquardt.

Q When was the first time you heard that this man Marquardt claimed not to have talked to you?

A Here in this courtroom.

Q The telegram that has been presented to the jury -- I believe it is Exhibit 30 -- did you have occasion to see that telegram?

A Yes, I did.

Q Where was it presented to you?

A At Mr. Ford's building.

Q By whom?

A I believe Mr. Ford handed me that in an envelope.

Q Did you keep that telegram, and was it in your file until sometime in April of 1970?

A Yes.

Q To whom did you give the telegram?

A The first one, I believe, that had that was the Securities and Exchange Commission on or about April 30.

Q Did you ask Mr. Ford for his oral opinion

relative to the title of the California property?

A I asked him about the California property and he made the statement, something to the effect that this warranty deed, that a man who would warrant title for that much land without being able to deliver free and clear title was probably a fool, and I believe he also told me that the title policy had been ordered.

Q Further, did anybody show to you any quitclaim deeds in the chain of title in the California property?

A No.

Q If somebody had told you "quitclaim deeds," what would you have done?

A I would have to investigate it further because this is somewhat of a red flag to a person looking at a chain of title.

Q Mr. Barnett, who is responsible for the recordation of deeds insofar as any matter is concerned relative to transactions of your client?

A Select Enterprises, Inc. would be responsible for recording their deeds.

Q Mr. Barnett, I believe that if you would examine very quickly the opinion letters or the cover letters on the pro forma balance sheet, are those cover letters in accordance with and in the form of generally accepted --

Do you know?

A I do not know.

Q Did you know who he was an employee of as a general proposition?

A No, sir. I have never met him.

Q I direct your attention, finally, to that Sunday morning meeting at the Holiday Inn with Mr. Boyd and Mr. Joiner.

A Yes, sir.

Q It is true, is it not, that in addition to the balance sheet that you were to sign by the end of the meeting, the opinion letter attached to the balance sheet, also on display there was the Marquardt telegram which we have previously shown you, although you don't have it before you this moment, correct?

A Yes. I do have that with me.

Q It is true, is it not, that in the course of that discussion with Mr. Boyd and Mr. Joiner you objected to signing the balance sheet until the deeds were recorded or a title insurance policy was shown to you in respect of the California land? True or false?

A I don't recall.

Q It is also true, is it not, that you acquiesced in the proposal that Mr. Ford should be entrusted with the

deeds as a substitute for recordation and that that would be acceptable to you? True or false?

A I don't recall that particular conversation. I really don't.

Q It is also true, is it not, that the telegram was produced --

MR. RHODES: Objection. He may ask the question but he is trying to make a statement.

THE COURT: Objection overruled. Proceed.

Q Your testimony is that you did not receive that telegram on that occasion but you received it two days earlier in Mr. Ford's presence in his office, correct?

A I think it was either on Friday or Saturday morning I received that telegram.

Q Your testimony is that you had requested that telegram on a telephone conversation with someone who Mr. Boyd referred to as Marquardt and whom you addressed as Marquardt in the course of the conversation.

A Yes.

Q Your testimony is that you requested that the telegram be sent to you as a confirmation of the fact of your telephone call.

A Yes, sir.

Q Tell the jury, please, if you asked Mr. Marquardt

to address the telegram to Robert E. Ford and not yourself.

A I told believe I told him how to address it other than give him -- I might have given him the wrong street number or something, but I think I did tell him to send it care of Robert E. Ford, but I think -- I don't recall the exact words I used, but we were talking about Select, and that I wanted the confirmation, and he sent it directly to Select Enterprises, as I remember it. He sent it directly to Select Enterprises in care of Robert E. Ford at Northport -- I have forgotten the exact address -- Abilene, Texas, and it was a collect telegram.

Q The two Cobb letters before you, Government Exhibit 39, are addressed to you, Wayne Barnett, care of Robert E. Ford at a certain address?

A Yes, sir.

Q A telegram was not so addressed, was it? It simply said Robert Ford and gave a street and phone number?

A I believe it gave Select Enterprises.

Q Your recollection is accurate. Select Enterprises and the address, which has been corrected in the record.

Were you aware of any payment to Mr. Marquardt in respect of his undertaking to inspect the land described

A Who --

Q Who showed you the Maxson contracts when you were doing the work for Select?

A I believe Mr. Boyd did.

Q And if you stated that it was Mr. Goodloe, was that an inadvertent error?

A Yes, it would be.

MR. STOKAMER: Thank you. I have no further questions.

THE COURT: Does any other defendant wish to examine?

MR. GOLDMAN: I do, your Honor.

CROSS-EXAMINATION

BY MR. GOLDMAN:

Q Mr. Barnett, in early 1972 you testified that you gave two depositions in connection with civil proceedings, did you not, sir?

A Yes, sir.

Q With respect to the deposition involving the Peterson case, was that held in the Abilene National Bank conference room, sir?

A I don't recall.

Q Let me show you Defendant Ford Exhibit H and ask you if this refreshes your recollection as to where the

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Peterson depositions were held.

A This I have never seen before and I don't -- it doesn't refresh my memory.

Q Were one of those two depositions held at the Abilene National Bank conference room?

A It could have been. I don't recall. I stated that before.

Q Can you say now that you are not sure whether the Peterson deposition was held at the bank or Mr. Ford's office?

A No, sir, I can't.

Q You can't say where it occurred, is that correct?

A Yes, sir.

Q Now, sir, you also testified you believed that Mr. Ford was present at the Peterson deposition when you testified.

A Yes, sir.

Q Do you recall now whether it was the Zuckerman deposition that he was present at and not the other?

A I believe he was present at both of them, because he was representing me.

Q Sir, let me show you Government Exhibit 175. That document has your oral deposition, does it not, sir?

A Yes, sir.

Q Does it have a list of those present during the deposition on the cover page?

A Yes, sir.

Q Who is listed there?

A James E. Peterson.

Q Does it list appearances of attorneys?

A Yes, sir.

Q Who does it list as attorneys in the case, sir?

A For the plaintiff, Honorable Godfrey R. Sullivan, attorney at law, and it says he was not present.

For the defendant, Turner, Rodgers, Winn, Skurlock & Terry, attorney at law, by Honorable Jerry Jordan.

Q Mr. Ford is not listed as either being present or appearing as an attorney, is he?

A No, sir.

Actually, if you notice, it says that Mr. Sullivan was not present.

Q Mr. Sullivan was the attorney for the Atoka Bank. They were the plaintiff, were they not, in that action?

A I believe that is correct.

Q Do you have before you Exhibit 30, the telegram?

A Yes.

Q You recall testifying that you thought it had been addressed to you care of Robert Ford and then Mr. MacDonald produced it and said your recollection was accurate.

In fact, was your recollection accurate? Is Robert Ford's name on that?

A No, it is not.

Q It is addressed to Select Enterprises, is it not?

A Yes, sir.

Q It has been the address which you said you apparently made a mistake about which you thought was Mr. Ford's building?

A Yes, sir.

Q Do you recall on March 26, the day of the board of directors meeting what time approximately Mr. Ford left the office?

A I don't recall exactly what time he left but we met I would say somewhere between five and six o'clock.

Q Do you recall him telling you why he was leaving at that time?

A He had a part in an A.C.T. play.

Q What is A.C.T.?

A Abilene Community Theatre.

Q After he left on the 26th, when was the next time you saw him? Do you recall?

A I don't recall whether it was Friday morn ing or Saturday morning.

Q Do you recall whether it was after you went on vacation and then came back?

A Well, I didn't actually go on vacation until Saturday evening.

Q Do you recall whether the next time you saw him was after you had returned from that vacation?

A The next time I saw him?

Q Yes, sir.

A I believe it was the latter part of the following week.

Q Now, you said on your direct examination, again, that you believed that Mr. Ford gave you that telegram, is hatt correct?

A Yes, sir.

Q And you said, I believe, thatthat was in an envelope?

A Yes, sir.

Q Was that a sealed envelope?

A I believe it was and if I remember, the telegram was in a Western Union envelope and then that in another envelope, with my name on it.

Q Let me show you Defendant Ford's Exhibit G and refer you to line 15 through 24 and ask you to read that and see if that refreshes your recollection.

A Sir, may I read above it, because it refers --

Q Read it to yourself.

A Well, what I am saying is the question doesn't make sense unless you read something before.

Q Fine. Read it to yourself. Read the whole page or before, if you need, or after.

(Pause.)

A All right.

Q Having read that, might you be confused as to whether or not this was the letter that Mr. Ford gave you?

A He gave me another letter, as well.

Q Was that also in a sealed envelope, a letter addressed to you?

A Yes, sir.

MR. GOLDMAN: I have No further questions.

THE COURT: Any other lawyer have any examination? Any further examination, Mr. MacDonald?

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of testimony given by Michael Karfunkel at the Securities and Exchange Commission on May 25, 1970. That will be received in evidence by consent.

I shall call your attention to the fact that on page 80 there is a correction in green ink giving a name instead of a pronoun. It is the green ink name that is included there; is that right?

MR. BRODERICK: Yes, your Honor.

THE COURT: The case of Gardner is reopened to the extent that there is included in his defense from this exhibit pages 51, 52, 62, 63, 64, 66, 67, 80 to 81, 90, 93, 100, and 101, as marked out in red ink. That will be received in evidence.

(Defendant Gardner Exhibit A received in evidence.)

THE COURT: All the defendants have now rested. Is there any rebuttal by the government?

MR. MAC DONALD: No, your Honor.

THE COURT: The government rests?

MR. MAC DONALD: Yes, your Honor.

THE COURT: Ladies and gentlemen, I think what we will do is recess now for lunch. We will resume at a quarter to two at which time we will hear the closing statements of the lawyers in the case.

The taking of evidence is now complete. You may, therefore, go out. I have a few legal matters to attend to with the lawyers at the present time.

(Jury excused)

THE COURT: In the interests of expedition, may I say that the motions that were made at the close of the government's case are in each instance deemed to be renewed at this time. They are denied.

Is there any additional motion that anyone wishes to present at this time? Any legal motion?

MR. RHODES: May we have the right to adopt insofar as a defendant would benefit from the requests of other defendants --

THE COURT: I am not now going to concern myself with anything that has not been heretofore submitted. I have received fourteen different requests, some thick and some thin, to charge in writing, and I have painstakingly gone over all of them. I don't propose now to concern myself with any impromptu suggestions.

I will say that in the main the requests to charge have followed traditional lines, and although they will not be followed out in hoc verba, in substance they will be the Court's charge, the major exceptions being the two-inferences rule, which will not be charged.

Evidentiary detail suggested by particular defendants on behalf of themselves will not be singled out for special attention.

Beyond that, I think that I have collated in my proposed charge all of the material that has been submitted and you will have an opportunity at the conclusion of the charge to refer to any particular items. But if there is any particular charge that you now think is not a traditional request, if you call it to my attention I will tell you how I will rule on it specifically, if that's what you want.

MR. ROONEY: I ask you about my request number 11. It is the last one.

THE COURT: The substance of request number 11 is included. The substance of the request is that in order to hold any defendant to the conspiracy charged, the jury must find beyond a reasonable doubt that he was a member of the conspiracy, and they will be instructed to consider all of the evidence and the circumstantial evidence.

The substantive counts will go the jury basically on the aiding and abetting and Pinkerton, as to those defendants who were not personally actors in the substantive transactions.

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MR. ROONEY: I point out I don't think there is an aiding and abetting charge in the indictment.

THE COURT: I think that's the way it is going to be. This is no time to argue. Is there anything else?

MR. ROONEY: I was concerned about the last sentence in that request.

THE COURT: I will not charge in the words of the request. I will charge that unless the jury finds beyond a reasonable doubt that the defendant was wilfully and knowingly and unlawfully a member of a conspiracy, he must be acquitted.

What is the use of just pressing the particular words?

What do you want, Mr. Concannon?

MR. CONCANNON: Do you anticipate giving the government's requests which indicate essentially that the public is entitled to protection against crimes of this nature?

THE COURT: I don't have the charge here. I'm not clear as to whether that is included, but you may ask me again right after lunch when I will bring the charge down.

Please, let's not cumulate it for windjamming purposes. We have serious business and short time.

MR. EHRLICH: Your Honor, not with respect to the requests to charge, I want the record to reflect that I renew all pretrial motions and motions made during the trial on the grounds heretofore stated.

I point out Exhibit 296-A. It is a $9000 check to Joiner which a review of the records clearly shows that from Mr. Joiner's testimony that check was solely in connection with a grant from 40,000 shares of Pig 'n Whistle stock, and there is absolutely no connection with Select or Select Enterprises, and I move that that exhibit be stricken from the evidence.

THE COURT: Is that the contention of the government?

MR. MAC DONALD: No, sir. The banker from the Kansas town accepted 2000 shares of Select Enterprises stock as collateral on a loan.

THE COURT: All right.

MR. RHODES: I hesitate to say this, but I again neglected to offer exhibits.

THE COURT: The case is closed. This is not a piece of taffy to keep on pulling apart.

We will resume at a quarter to two.

(Luncheon recess)

you, based upon a shuffling of papers, to find that Ed Goodloe and the others here are guilty of some crime.

Ed Goodloe is not a criminal. He has no reason to be punished. He has no reason to suffer any more than he has already suffered.

I urge you to vote not guilty.

THE COURT: Mr. Goldman.

MR. GOLDMAN: Your Honor, gentlemen, Mr. Foreman, ladies and gentlemen of the jury:

You are here to judge whether a crime was committed and no one is standing before you to tell you that crime is justified or crime is okay but, even worse than crime, is to convict an innocent man. If you convict on less than evidence beyond a reasonable doubt, if you convict on speculation or supposition, if you convict on conjecture or suspicion or if you convict by guilt by association, I say that is less than the crime these gentlemen are charged with.

You ladies and gentlemen are the sole judges of the facts in this case. You are supreme in that duty and it is an awesome power and an awesome responsibility to determine the fate of a fellow human being. It is an important decision. It is perhaps the most important you will make in your entire lives.

It is certainly the most important decision in Robert Ford's life.

Let me say at the outset that what I am going to say is not evidence. Similarly, what Mr. Mac Donald said and the other counsel say is not evidence. Eloquence is no substitute for evidence; theory is no substitute for fact in this courtroom.

Mr. MacDonald has spun a lovely web but that web is only tissue thin. He has thrown it into a document here and a document there but it is really only as strong as one link, which snaps like that.

As to Robert Ford he has given you lots of theory but very little fact. In my opening, I stressed to you that the burden of proof was on the government and, in order to convict anyone, the government must prove guilt beyond a reasonable doubt. Until and when, if ever, they do, the defendant is entitled to a presumption of innocence and that burden right now is still on the government and the defendants, all of them, right now are presumed innocent.

At this trial, we need not have questioned, cross-examined. I need not argue or sum up to you. Mr. Ford certainly didn't have to get on the witness stand and give testimony. He did. But that, ladies and gentlemen, does not change the burden of proof one iota. It is still on the

government and the government must, in order to convict, prove his guilt beyond a reasonable doubt.

The issue is not whether or not you believe Robert Ford. The issue is are you convinced beyond a reasonable doubt that he committed a crime or participated in an alleged conspiracy.

Now, Robert Ford testified before you. He opened himself to your scrutiny and he was on the witness stand for over a day. You heard him. You saw him. Some of the things he testified, frankly, he didn't remember. These were facts that occurred five and a half years ago and you ask yourselves to remember details of things that happened five and a half years ago, and I am sure you realize that you can't.

Mr. Ford did tell you about his background. He has been a lawyer for 26 years, he has never been convicted of a crime. He is a father, he is a husband.

In January of 1970, he was hired by Mr. Goodloe to draw up some conveyances dealing with some oil and gas leases and some Mica Mines and he did so on January 23.

On the 26th, he drew up some opinion letters and Mr. MacDonald argues that those were backdated, and I will get to that shortly. That is argument based on one mistake Robert Ford made two years and two months after these events

in testimony and a lot of theory.

In February and March, Mr. Ford met Mr. Brinlee and Mrs. Vinson and he drew up a contract and he assisted on a warranty deed for the California lands. He didn't attach the appraisals which are attached to that document. Even Mr. Brinlee says that those appraisals weren't attached when he signed that contract. In March, again, Mr. Ford briefly attended a board of directors meeting at his office and it was in his office because he was halfway between Midland and Dallas. He left early to go to a play rehearsal.

In April he went to California, flying out early one morning, coming back late the next night. While there he had some deeds re-acknowledged. They were not backdated. There is nothing sinister about that.

These were deeds that were signed on February 21, clearly, and they were meant to convey to Brinlee and Vinson from Ace Associates on that date but, because the person signing it or the notary did not fill in the proper form, they had to be re-acknowledged. But that deed was executed, plainly and simply, on the 21.

There was nothing sinister about using that date on the re-acknowledgment and the correction.

Then, in California, Mr. Ford went to the county seats, recorded those deeds, including his own deed, and he

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then was taken on a trip by Mr. Harvey, associated with Ace, and shown and pointed out along the road what purported to be land that was conveyed to Select.

Later in April, he represented Mr. Boyd, Mr. Barnett and Mr. Goodloe before the SEC. While there, on the 17, he was asked certain questions by Mr. Hewitt of the SEC. He was asked what happened in California and he told him.

He told him he recorded deeds; he told him he saw the land and he was asked to describe it and he was asked what is the land and describe it and he said "It was desert land."

Now, he was asked whether it was the Imperial Valley and he said no, it wasn't.

If you compare what is Government Exhibit 4 and Government Exhibit 5, the stockholders letter that Mr. Chapel drew up, and the brochure, you will see that that same land is described as lush, agricultural land. If Mr. Ford were part of this conspiracy, would he have gone before the SEC and said, "No, the land is desert land; it's table-top flat, sandy loam; it isn't in the Imperial Valley"?

The answer is, if he were part of any conspiracy, he would not have said that. There was no attempt to mislead In fact, he told the SEC exactly what is true.

Now, at those hearings, on the 17th, there were some documents handed up. One of them, according to the government, was JB 21 which is supposedly the Cobb letter. If you look through that SEC testimony of Mr. Boyd on that date, you will see there is not a reference within it to any testimony concerning that, and Mr. Ford testified that he did not believe that he had anything, handed that letter or even saw it that day. Perhaps five and a half years later he is mistaken.

In any case, there wasn't any testimony about that and the only evidence of that is a little notation on that document.

In any event, there is no evidence that before Mr. Ford gave any documents up that he inspected them, that he knew if they were false or that, in fact, they were false.

He was a lawyer and when a lawyer, just as lawyers in this case, including the government, put in documents, it was because they had usually been given to them by their clients and those clients certainly were entitled to representation, just as everyone here is.

That, basically, is what Mr. Ford did with Select. The government would like to make this into a criminal act. Besides a few other minor things, the government takes all

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of this and they say that that is a conspiracy. Perhaps it is something else but it certainly is not a conspiracy.

For this, for his work for Select, Robert Ford received 6700 shares, actually from Mr. Goodloe involving other work he had done for him; 6700 shares of investment or restricted stock. Plus stock that you could trade, not stock that you could sell through brokers, but investment stock.

If he were part of a conspiracy as he is alleged to be in the indictment, to sell through wash sales and various finaglings this stock on the open market, would he have accepted restricted stock? Obviously not.

Those, ladies and gentlemen are the facts of Robert Ford's involvement with Select.

There is no evidence whatsoever that he was an officer, director. There is no evidence that he was ever in Nevada, had anything to do with the so-called shell.

He gave no opinion dealing with the trading nature of stock. He never had any stock dealings with New York brokers; he never had any dealings with appraisals.

He never had anything to do with a stockholders' letter sent out to people or a brochure extolling the virtues of Select. He never transferred any property to Select. He never priced or sold any Select stock. He never had any-

thing to do with the Patio Building or any of the properties in New York.

You have heard Mr. Alan Segal, you have heard Mr.Chapel and you have heard Mr. Joiner. They are the major witnesses to the government case. They were each on the stand for a day or so. Not one of them had anything to say as to whether or not Mr. Ford was part of any conspiracy; not one of them put him in any meeting or discussion where there were any plans concerning Select, other than the board of directors meetings which you know he went to.

Not one of them had him meeting to cover up or discussing with anyone giving any false testimony before the SEC. In fact, Mr. Chapel was asked about a meeting and his testimony was that when the SEC called him down, he spoke to Mr. Boyd and Mr. Boyd said, "You don't need a lawyer." He didn't say -- notice Mr. Boyd did not say -- "Get Bob Ford; he will tellyou what to say."

Mr. Boyd said, "You don't need a lawyer; just go down there."

Then, later, the next day Mr. Chapel met Mr. Boyd and, who was there? Not Bob Ford but Selwyn Weber. Bob Ford was not involved in any cover up.

Bob Ford was not involved in any sale or any dealings or any stock transactions in New York.

I am not going to argue whether or not there was any conspiracy. You have heard some argument on that and you will hear others. It is not Bob Ford's burden. Whether or not there was a conspiracy, and I am not saying in any sense that there was, there is no evidence that Bob Ford had anything to do with it.

The government has argued that Mr. Ford backdated a title opinion. Now, this is an attempt to confuse certain facts. It is an attempt to broaden testimony dealing with certain items in New York -- the Diamond Brothers Furniture Company in the Riverside Hotel -- to confuse that with what happened with respect to the oil and gas leases.

It is an attempt to supply by conjecture, by argument and by speculation, what is lacking from the evidence.

You have heard some talk concerning the Riverside Hotel and Diamond Brothers being backdated. Those were done for the brokers due diligence files. You will notice that you have seen Karfunkel and Azzorone and Anfang and a few brokers and not one of them testified that there were title opinions given to them, that they were prepared for the due diligence file and not only is there no evidence of backdating but, in fact, the key evidence comes from the government's own witnesses, indicating to the contrary.

The government argues, somehow, there is some external evidence because Joiner did not see the title opinions in late January. He did say that he saw some documents relating to the Mica Mines and then the LaMessa; he did say that Boyd had told him about the acquisition of oil properties in Mica Mines. There is no proof that he had to look at the documents or was shown them or remembered not seeing them, particularly.

Mr. Elms, on the 27th, according to his notes was aware that the acquisitions of Select had included the Mica Mines and oil and gas properties.

Mr. Chapel, on January 20, when he first heard of Select from Mr. Boyd, was told that the assets included Mica Mines and oil properties.

Then, there is Alan Segal's testimony, Alan Segal testified that on the 26th he saw Mr. Boyd and he said to him, as to the Mica Mines and oil and gas properties, "I need some documentation that it belongs to Select," and Boyd said, "It is being done now; it is being completed right back home in Texas."

That is on the 26th, the same day that Bob Ford was drawing up the opinion letters.

The sole evidence concerning backdating comes from Bob Ford's statement in a deposition 26 months after

the event, that he believed, and he uses the words, "I believe," that I wrote the oil and gas title opinion in March. 26 months later he made very simply a mistake. He confused the dates.

If you recall, at that time he had no records, they had been taken from him by Mr. Sullivan, the lawyer who represented Select at a later date, and that he said in his deposition, "I wish I had the document here." That would have been obviously to refresh his recollection.

Nobody showed it to him and nobody ever asked, significantly, was it backdated because then the answer would have been no.

7-3 Now, this is not an earth-shattering, significant event, for a lawyer to do an opinion letter. It was nothing about that that would make you remember the date.

Mr. Ford, even when he was confronted, that is, when the attorney said, "Well, Mr. Barnett has just testified that it happened in January; what do you think of that," Mr. Ford says, "No, he is wrong; it happened in March." Stubbornness, true. Criminality, no.

If anything, this is solid proof of his innocence and his lack of involvement in any conspiracy. If Bob Ford had backdated, if he were part of a conspiracy that involved backdating, wouldn't he be careful to say that it happened

in January? Wouldn't he be prepared and when confronted with Mr. Barnett's statement, wouldn't he be careful about his answer?

You recall the testimony as to people who got their statements together for the SEC, how they met before, how they decided to give it, hide something else, say you met here or there.

Wouldn't that have happened if he was part of any conspiracy? His very mistake here is proof of his innocence.

Now, the government, however, speculates again that we have other proof of Mr. Ford's backdating. One document they claim there is a second notarial seal and a second swearing to that. That is interesting but what does it prove? Mr. Mac Donald attaches some interesting theory to it, but, again, without any proof.

Then, secondly, Mr.Mac Donald says, "Well, it shows that that document has an attachment which is put on at a later date because that attachment includes the oil and gas leases in the letter of the 26th."

It is hard, five and a half years later, to give you a solid explanation of that. I submit what might have happened was that the secretary, on the letter of the 23rd, made a mistake. Subsequently, the attachment from the 26th was put on and perhaps it was re-notarized retroactively to

the date it had been notarized first.

It is hard, five and a half years later, to give you an exact answer to that but, so what? Thatis certainly not evidence. It is speculation.

More important, I ask you just to forget the details for a second and use your common sense and, please, in the juryroom forget that. Whatreason was there to back-date these documents? Now, Mr. Mac Donald admits they were given to Mr. Barnett prior to the time he did a balance sheet. It is clear that the oil and gas leases and the Mica Mines had been conveyed in January from all kinds of evidence, both documentary and from the witness stand. What was the difference? If they had a March date on them or a January date, whatwas the difference? They weren't used in a brokers due diligence file.

The answer is, it didn't matter and there was no need to. If it did happen, in no way would it further any conspiracy.

Now, Mr. Mac Donald, again grasping, tries to make something out of the sequence of events. The deed was dated the 23rd and it was given -- you recall Mr. Ford's testimony -- to Mr. Goodloe on that date and then there is a contract dated the 24th and Mr. Mac Donald read to you the second page which says "The parties hereto each agree to

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execute immediately as called upon further conveyances to effectuate this contract," and says, "Aha, that proves that the deeds weren't yet effectuated."

But, he didn't read to you on that page where it says "Seller herewith -- the seller is Mr. Goodloe -- bargains, grants, sells and conveys to buyer all his rights, title and interest in and to the oil and gas leases owned by seller."

It is just a standard legal line that if there is anything else that has to be done, it will be done. But it says right there in that contract that those things are conveyed. Very simple.

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Let me briefly say something about the Mica Mines. You have heard some talk there was a mortgage to this day. Mr. Ford's opinion letter on the Mica Mines, he never specifically says anything about a mortgage. Is there not an accountant's certification in dealing with it? He never says he went through the New Mexico records, and there is no mortgage.

The government's argument that there is a mortgage is based on a letter from a witness whom you have not seen, and you will see there are two letters there. The first time the witness looked for any documents she, the clerk, could not find them. The second time she found the mortgage she said it appeared to be not for this.

I submit that person is no the person you can rely on to prove any guilt in any criminal case.

Secondly, if you read further in that you will see that the people who supposedly got this mortgage were C. A. Morris, who was the proprietor in 1968, the date of the mortgage, of the C. A. Morris Company. This is the man who later conveyed to Select, as the testimony is said. It is clear from the fact no action has been taken and that Mr. Morris, after conveying it, had no intention of enforcing any mortgage. It is even more clear, if you read the attached letter to that, Mr. Morris, in an affidavit attached

to this document, says, dealing particularly with another claim: During the entire period of the ownership of the above described mining claim by C. A. Morris and Company they -- obviously C. A. Morris and Company -- have held possession thereof continuously without any claim from any person or firm except for Mr. Burns indicating that his own claim was not in existence.

The government also claims that Mr. Ford's letter dealing with the oil and gas leases was incorrect. To do that they have to rely on Mr. Peterson, and Mr. Peterson alone, because although Mr. Peterson handed you a whole lot of documents not one of them proves that Mr. Ford, back in 1969, knew he had any interest with Mr. Goodloe.

Mr. Peterson has been discussed briefly by Mr. Stokamer, and I will quickly say a few words on it because he basically is the only live witness, except for Mr. Brinlee, to an extent, against Bob Ford. Mr. Peterson was a nursing home owner who is now serving time in prison for a Medicaid swindle. Some of this time was served in a New York Hotel with his wife. He is hoping for an early parole based on a promise from Mr. MacDonald that he would recommend it.

Mr. Peterson claimed in May, '69, he had some discussions with Mr. Goodloe and that Bob Ford was supposed

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to assign and draw up some assignments for him, and for six months, according to Mr. Peterson, he didn't get it, and he made some calls to Bob Ford badgering him, "Where are they?" and they still didn't come.

If you had a lawyer who was supposed to do a job for you and you waited six months and he didn't do it, and he kept giving you excuses, you would not think much of him and you would not come back. Yet, Mr. Peterson all of a sudden in the fall of 1970 goes to Bob Ford and asks him to handle the case, and then in 1971 he consults him on another matter. Why? Because there was no such dealing with Bob Ford. Bob Ford had no knowledge of the Mr. Goodloe and Mr. Peterson deal back in 1969, and there is no proof whatever of that, no written proof. In fact, although Mr. Peterson claimed to have a 25 percent interest you will recall that when he put out a financial statement in October of 1970 for the bank -- and you have seen a lot of these statements in evidence -- you saw how detailed they are because you have seen them in evidence -- that statement said nothing about his ownership of oil and gas leases. Very simple: There was not any.

Let me briefly say something about this California land deal. This land was in Mexico, and you wonder why Mr. Brinlee was sitting up there while people like Mr. Ford was

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sitting down here. Select, very simply, was duped -- not duped that badly because Mr. Ford, fortunately, insisted on a warranty deed, and he insisted on it because he had been told by Mr. Brinlee that he could absolutely guarantee title. That's the word, "absolutely."

Now Mr. Ford, obviously, believed that Mr. Brinlee could have delivered because he himself took two sections to this land and he was careful when he went to California to record it. If this land was worthless, if he knew the land was going by the United States government or in Mexico or whatever, would he have done that?

Now, as to the California land itself, it is very clear Mr. Ford never gave any title orally or written. The only statement he said was in an offhand kind of way: "Those people would have to be crazy to convey a warranty deed if they didn't own this land."

Now Mr. Binlee, you will recall -- and I was going to say a lot about Mr. Brinlee -- Mr. Brinlee was, next to Mr. Peterson, the only other witness who really testified against, in any sense, Bob Ford. Mr. Brinlee testified, as you will recall, that the deeds were supposed to be held in escrow and not to be released and not to be recorded.

The government, in its statement of facts, Mr.

MacDonald, apparently gave that up because you will recall we confronted Mr. Brinlee with this letter, Defendant Ford Exhibit A signed by him, signed by Mrs. Vinson, saying that after the warranty deeds had been delivered and been placed on record and after title policy had been issued, then you will get your stock. So, quite clearly, this had to be recorded and so on.

Even the government apparently abandoned Mr. Brinlee's earlier testimony.

Mr. Ford was at the Securities and Exchange Commission and discussed the California land. He said he went there; he was there for a brief time and he saw it and described it, the way I said before. He said he had some documents coming. He had some notes from Mr. Harvey with regard to the Spanish Land Grant, and so on, and at one time he is asked, he gives the name Perez, and he is asked the full name of Perez, and he says, "I don't have it." That's not a man that is pretending to know anything he doesn't; he was a victim.

Ladies and gentlemen, that, in essence, is what the government calls a case against Robert Ford consisting of a little bit of Brinlee, a little bit of Peterson, and a lot of Mr. MacDonald's theorizing. I submit to you, very clearly, Brinlee and Peterson are unworthy of belief. Even

if you believe every single word they say, that doesn't add up to any proof or any conspiracy. That is no proof of any claim or certainly not the crime charged here.

In sum, ladies and gentlemen, you have heard from Mr. MacDonald, you have heard my view of what the government's case is. That's the kind of evidence they ask you to believe to destroy Bob Ford's life, his reputation, his profession, and his family.

I submit to you it is not the kind of evidence, not the quality nor the quantity, that you would need to convict him beyond a reasonable doubt.

I ask you, with respect to him, give him the benefit of your individual verdict as you should give every defendant. There has been some confusion, there was a lot of confusion, and perhaps there were some mistakes or carelessness. With hindsight perhaps even some errors. But there is no proof beyond a reasonable doubt of any involvement in any criminal conspiracy.

I ask you, ladies and gentlemen, listen to the judge's charge and then when you go into the juryroom assess the evidence, consider it, and give this Texan the same kind of justice that you would want for yourself, your brother, your sister, your child, or your husband if he or she ended up in a court in Texas. If you do that and you consider the

evidence fairly and impartially, there is no way, no way at all, that you can come back and look Bob Ford in the eye and find him guilty, because there is no evidence to justify a conviction.

Scrutinize the evidence, consider it, weigh it. When you do, I am confident you will vote as to Bob Ford Not Guilty.

THE COURT: Ladies and gentlemen, in view of the hour we will now recess until 9:30 tomorrow morning. You are excused.

(Time noted: 5:30 P. M.)

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bs56 CONCLUSION OF JURY DELIBERATIONS AND FINAL VERDICTS

Pay no attention to anything you read or hear about this case. You are the ones who know what the evidence is.

Good night, have a good weekend.

(Court adjourned at 7.10 p.m.)

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UNITED STATES OF AMERICA

vs.

JOE TRUMAN BOYD, et al.

New York, October 20, 1975.

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(The jury resumed deliberations at 10.30 a..)

(Two notes received from the jury marked Court Exhibit 68.)

(In the courtroom, 2.00 p.m.)

THE COURT: I have two notes here, gentlemen: "Your Honor, the jurors request Vanasco's testimony to the SEc and also Rappaport."

Did Mr. Rappaport testify in the SEC?

MR. SUSSMAN: Rappaport did not testify, your Honor. The best that I recall, I don't think Mr. Vanasco did either.

MR. CONCANNON: Mr. Vanasco did not testify before the SEC.

MR. BERGER: Mr. Rappaport did not either.

THE COURT: How do you want me to endorse this?

MR. BERGER: Well, neither were called to nor testified.

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THE COURT: I won't say anything about being called. That's already adding something, but since there is another note here which requires them to be brought in, I will explain it.

They say:

"We would like to listen to Christine Smith 's testimony."

So, we will have the jury in.

MR. BERGER: Your Honor, may I call my client? He is outside.

THE COURT: Of course.

(The jury entered the courtroom at 2.15 p.m.)

THE COURT: Ladies and gentlemen, I have your note requesting Vanasco's testimony to the SEC and also Mr. Rappaport. Neither one testified to the SEC.

You say you would like to listen to Christine Smith's testimony.

The reporter will now read Christine Smith's testimony.

(Recor read.)

THE COURT: Is there anything else, Mr. Veguilla, that you want at this time?

THE FOREMAN: No, not at this time, your Honor.

(The jury left the courtroom to resume deliber-

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ations at 2.50 p.m.)

(In the courtroom - 5.50 p.m.)

THE COURT: I have a note which says:

"Your Honor, we have reached a complete verdict on all the defendants."

Bring the jury in.

(The jury entered the courtroom at 5.52 p.m.)

THE CLERK: Mr. Veguilla, have you reached a verdict?

THE FOREMAN: Yes.

THE CLERK: How do you find the defendant Robert E. Ford on Count 1?

THE FOREMAN: We find Mr. Ford guilty in Count 1.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Guilty.

THE CLERK: Count 52 to 53?

THE FOREMAN: Guilty.

THE CLERK: How do you find the defendant M. S. Knisely on Count 1?

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THE FOREMAN: Guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Guilty.

THE CLERK: How do you find the defendant Marvin J. Rappaport on Count 1?

THE FOREMAN: Not guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Not guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Not guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Not guilty.

THE COURT: Counts 52 and 53?

THE FOREMAN: Not guilty.

THE CLERK: How do you find the defendant Emerson Titlow on Count 1?

THE FOREMAN: Not guilty.

THE CLERK: Counts 2 to 28?

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THE FOREMAN: Not guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Not guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Not guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Not guilty.

THE CLERK: How do you find the defendant Edward Vanasco on Count 1?

THE FOREMAN: Not guilty.

THE CLERK: Counts 2 to 28?

THE FOREMAN: Not guilty.

THE CLERK: Counts 29 to 40?

THE FOREMAN: Not guilty.

THE CLERK: Counts 41 to 51?

THE FOREMAN: Not guilty.

THE CLERK: Counts 52 and 53?

THE FOREMAN: Not guilty.

THE COURT: Now, ladies and gentlemen of the jury, you have heard your foreman read the verdict and the clerk will now poll you to see whether that is your verdict.

(Each juror, upon being asked, "Is that your verdict?" replied in the affirmative.)